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FILED
 APR 21 2008
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

04 08 8071

JESUS LOPEZ,)	Case No. _____
)	
Petitioner,)	EXHIBITS FOR PETITIONER'S
)	PETITION FOR WRIT OF HABEAS CORPUS.
v.)	
BEN CURRY, Warden (A), et al.,)	(Bound, Submitted and Lodged Separately)
)	
<u>Respondent.</u>)	

PETITIONER'S EXHIBITS FOR HIS PETITION FOR WRIT OF HABEAS CORPUS
 (BOUND, SUBMITTED AND LODGED SEPARATELY)

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(PR)

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EXHIBIT

“I”

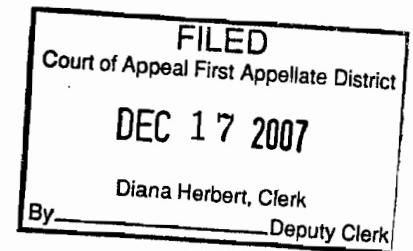
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re JESUS LOPEZ,
on Habeas Corpus.



A119885

(San Francisco County
Super. Ct. Writ No. 5495)

THE COURT:

The petition for a writ of habeas corpus is denied.

SIGGINS, J.

Dated: DEC 17 2007

J.

* Siggins, J. & Horner, J. (Judge of the Alameda Super. Ct., assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.), participating. Pollak, J. dissents from the decision to summarily deny the petition.

POLLAK, J.—Dissenting.

This is yet another case the ultimate outcome of which is dependent on resolution of the proper standard of review, an issue now pending before our Supreme Court. (*In re Lawrence* (2007) 150 Cal.App.4th 1511, review granted Sept. 19, 2007, S154018.) As I have written in previous dissents, if no more is required to uphold the denial of parole than some evidence that the petitioner committed a horrible crime—i.e., one “in an especially heinous, atrocious, or cruel manner” (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1))—it may be that the Governor’s decision to overturn the finding of suitability for parole can be upheld.¹ If that is the standard, petitioner can be denied parole forever for the crime he committed more than 24 years ago, despite his subsequent undisputed salutary efforts at personal improvement and the exceptionally low risk of recidivism he presents (“the lowest level that can reasonably be estimated” in the words of one psychological assessment [petn. exh. II, p. 59]). However, if, as a growing number of cases have held, what is required is some competent evidence tending rationally to show that he “will pose an unreasonable risk of danger to society if released from prison” (Cal. Code Regs., tit. 15, § 2402, subd. (a)), the finding of unsuitability clearly cannot be sustained.² (E.g., *In re Dannenberg* (2007) 156 Cal.App.4th 1387; *In re Barker* (2007)

¹ Even that is debatable, since the Governor’s explanation for his decision reflects a misunderstanding of the facts of the crime. The Governor indicated the crime was “especially grave” in part because it involved multiple victims and shooting both of them multiple times. In fact, while petitioner did shoot a single victim four times, the record reflects that the second “victim” was a bystander inadvertently struck by a ricocheting fragment from one of the shots.

² The words of the presiding commissioner of the Board of Parole Hearings explaining the Board’s finding of suitability bear repetition: “[Y]ou had no juvenile record of assaulting others, that you had a stable social history exhibited by reasonably stable relationships with others. You came from an intact family, large family in Mexico. But while in prison, you’ve enhanced your ability to function within the law through participation in education programs and the Panel noted that although you had a high school diploma from Mexico you took advantage of the opportunity here and achieved a GED while incarcerated. That you’ve participated in self-help programs. The Panel noted and to your credit that you’ve not only done one program with respect to the alcohol issues, that you’ve actually done three in a long sustained manner. And that included the 12-Step program and multiple other AA programs occurring on different nights of the week. So far as your vocational programs, you did get the vocational certificate in auto mechanics and you also have had institutional job assignments that will provide you

151 Cal.App.4th 346, 366; *In re Weider* (2006) 145 Cal.App.4th 570, 589; *In re Scott* (2005) 133 Cal.App.4th 573, 595.) What the Sixth Appellate District said in overturning the Governor's denial of parole in *In re Dannenberg*, is equally applicable to the petitioner here: "It is not the mere passage of time that deprives [petitioner's] commitment offense of predictive value with respect to the risk he may pose to society.

opportunities for marketable skills upon your parole. . . . The Panel noted that the offense could have been committed as a result of significant stress in your life and the indication was that there was a life threatening knife attack that you had previously suffered, that you lacked a significant criminal history of violent crime. This essentially was your only crime. . . . Because of your maturation, growth and a greater understanding and your advanced age the probability of recidivism is reduced. . . . You've got realistic parole plans. They include a job offer and family support. . . . We also noted that you've got substantial support by virtue of letters. . . . That you've maintained positive institutional behavior, which indicates a significant improvement in self-control, and to your credit you have only one 115. That was in 1988 and it was for the offense of not wearing earphones with your radio. . . . That you've shown signs of remorse, that you indicate you understand the nature and magnitude of the offense. You've accepted responsibility for your criminal behavior and you've demonstrated a desire to change toward good citizenship. These demonstrations have occurred in the evaluations that have been done by the psychologists, the comments that have been made in the Board reports and the comments that were made at today's hearing. . . . The Panel considered two psychological exams. The first one being September of 2003 by Dr. Reed. Dr. Reed concludes in one portion of the report that you appear genuinely remorseful for your crime. You understand fully the damage that was done to the victim and the family and you appear to be fully aware how your anger, fearfulness and . . . in a potentially dangerous situation and possession of a handgun and being under the influence of alcohol, those were all factors that led to the death of the victim and . . . you do appear genuinely penitent for the crime. The doctor also concluded in the same report that if released to the community that your violence potential was considered to be low and in parentheses he indicates the lowest level that can be reasonably estimated. And also that one of the other observations is that you're competent and responsible for your behavior and that you have the ability to abide by institutional standards and you've done so during your incarceration. We also considered a report that was done in February of 2000 by Dr. Pesavento [which] indicates that your violence potential outside a controlled setting in the past is considered to be average and at the present is estimated to be decreased. If released to the community, you in all probability—be likely to continue the improvement given your defined set of personal expectations and goals. And also the doctor noted even at that time that you appear to have matured and taken complete responsibility for your actions and that you've become an independent thinker and appear to have learned from your previous mistakes." (Petn. exh. II, pp. 55-59.)

The Governor noted all these positive factors and disagreed with none of them. Nonetheless, he concluded, "The gravity of the second-degree murder committed by Jesus Lopez is alone sufficient for me to conclude presently that his release from prison would pose an unreasonable public-safety risk." (Petn., exh. IV, p. 3.)

The quantity and quality of [petitioner's] consistent and spotless record of upstanding conduct for the last 20 years, coupled with the absence of any negative factors and the presence of every conceivable favorable factor, combine to eliminate any modicum of predictive value that his commitment offense once had. The record before the Board . . . lacks any support for the . . . conclusion that, due to the nature of his commitment offense, [petitioner] poses a current, unreasonable risk of danger to society if released."

(*In re Dannenberg, supra*, at p. 1401.)

In my view, these latter cases reflect the correct standard. There is absolutely no evidence that petitioner presents a significant risk of reoffending and he is therefore entitled to be released on parole.

Pollak, Acting P. J.

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re JESUS LOPEZ.,
on Habeas Corpus.

A113836

FILED	
Court of Appeal First Appellate District	
JUN 29 2006	
By	Diana Herbert, Clerk Deputy Clerk

(San Francisco County
Super. Ct. Writ No. 5325)

BY THE COURT:*

The petition for a writ of habeas corpus is denied.

Dated: JUN 29 2006McGUINNESS, P.J.

* McGuiness, P.J. and Parrilli, J. concur in the decision. Pollak, J. dissents.

Pollak, J., dissenting.

I would grant an alternative writ. This is yet another case in which the Board of Parole Hearings, formerly the Board of Prison Terms (the Board), has found an inmate serving an indeterminate life sentence for second degree murder to be unsuitable for parole based solely on the immutable circumstances of the underlying offense, giving nothing but lip service to every other criteria that the governing regulations require the Board to consider. (Cal. Code Regs., tit. 15, § 2402.)¹

Defendant began his prison term in August 1986 and first became eligible for parole in May 1996. Despite the absence of a criminal record other than the single committing offense,² unquestioned remorse, an exemplary prison record, successful long-term participation in Alcoholics Anonymous and anger management courses, a supportive family and prospective employment in Mexico, where he certainly will be deported, and a psychological evaluation that he presents a below average risk of further violence and “can function well on his own and become a productive member of society” (Exh. A, p. 44), the Board has once again found him unsuitable for parole. According to the presiding commissioner, the denial of parole “really is based almost entirely on the commitment offense. . . . Mr. Lopez does not have a significant criminal history. And he has been programming well. He’s had only one 115 disciplinary report during his entire incarceration . . . your counselor’s reports, your psyche evaluations are . . . favorable and he does have parole plans in Mexico. Once again, Mr. Lopez, this is a . . . denial that’s really based on the crime.” (*Id.* at pp. 64-65.)

¹ All references to regulations are to California Code of Regulations, title 15, section 2402.

² As a result of the single shooting episode, defendant was convicted both of murdering the intended victim, and of assault with a firearm upon a bystander injured by a ricocheting bullet.

What were the circumstances indicating that the commitment offense was committed “in an especially heinous, atrocious or cruel manner” (regs., subd. (c)(1))? In a drunken argument, defendant retrieved a gun from his car and ultimately shot the intended victim four times, the final shots after the victim had fallen to the ground. According to defendant, whose description of events is nowhere contradicted or questioned, “we were speaking about willing [killing?] each other like what are you looking at me and he’s looking at me and we start talking that way and we, we start speaking about our mothers. And I was so intoxicated, I was so drunk and I cannot overcome that kind of conversation. So finally I just, I told him, you know, hey, what happened, why you talk to me that way and . . . I was bringing the gun in thinking to talk, talking to him again to see if he, we, we make him – . . . I ask him – he say you have not the balls you son of a bitch. You, you, and then his friends started, started to surrounding me. And one of them or I see someone to went over there and locked the door. So I got scared so, very scared so. . . . So I start shoot. I don’t know how many shots I took. I don’t know how much time I stand up right there, so until my friend comes and scream my name, ‘Jesus, what do you do? Let’s go, let’s go.’ And I just wake up like I wake up.” (*Id.* at pp. 15-17.) In the words of the presiding commissioner, “This was a very, this was a callous offense. This was a situation where Mr. Lopez could have easily left, he was in no danger.” (Exh. A, p. 65.)

The issue, of course, is not whether defendant was justified in shooting the victim, but whether the circumstances of the crime provide any rational indication that defendant “will pose an unreasonable risk of danger to society if released from prison.” (Regs., subd. (a).) While “a prisoner may be deemed unsuitable for release on the basis of the commitment offense ‘alone’ . . . [citation], [this] proposition must be properly understood. The commitment offense is one of only two factors indicative of unsuitability a prisoner cannot change (the other being his ‘Previous Record of Violence’). Reliance on such an immutable factor ‘without regard to or consideration of

subsequent circumstances' may be unfair [citation], and 'runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation.' [Citation.] *The commitment offense can negate suitability only if circumstances of the crime reliably established by evidence in the record rationally indicate that the offender will present an unreasonable public safety risk if released from prison.*" (*In re Scott* (2005) 133 Cal.App.4th 573, 594-595, fns. omitted, italics added; see also, e.g., *In re Scott* (2004) 119 Cal.App.4th 871, 891; *In re Smith* (2003) 114 Cal.App.4th 343, 366-367.) Nowhere in this record is there any *evidence* or rational explanation drawn from the circumstances of his crime indicating a reason to believe that this defendant will pose an unreasonable risk to public safety if released. To the contrary, the record reflects, and the Board acknowledged, that defendant has successfully addressed the underlying issues of alcohol abuse and uncontrolled anger that led to his offense.

The parting words of the presiding commissioner to the defendant succinctly confirm the lawlessness of the approach being followed by the Board and sanctioned by the courts in the growing number of cases such as this: "We just recommend that you continue your programming; you are doing a good job. Continue to remain disciplinary free. And it's just a matter of time before there's a Panel that feels like it's time." (Exh. A, p. 66.) But the granting of parole is not supposed to be a matter of whim. "[R]elease on parole is the rule, rather than the exception." (*In re Smith, supra*, 114 Cal.App.4th at p. 351.) "[A] grant of parole is an integral part of the penological system intended to help those convicted of crime to integrate into society as constructive individuals as soon as possible and alleviate the cost of maintaining them in custodial facilities . . ." (*People v. Vickers* (1972) 8 Cal.3d 451, 458, 455; *Morissey v. Brewer* (1972) 408 U.S. 471, 477.) The applicable regulations prescribe numerous positive and negative factors that are to be weighed in determining an inmate's suitability for parole. The entire system becomes a mockery if all the Board need do to defer parole indefinitely

is to repeat the talismanic phrase, "the crime was callous." The Board here has recognized that absent this factor, defendant meets all of the criteria for parole and has done everything he conceivably can do to obtain his release. In my view, it is not sufficient to tell the defendant that he must wait until somebody, some day, feels like releasing him. This is not an acceptable rule of law.

Pollak, J.

EXHIBIT

“II”

BOARD OF PRISON TERMS**LIFE PRISONER: PAROLE CONSIDERATION PROPOSED DECISION
GRANT PAROLE****STATE OF CALIFORNIA****NOTE TO CDC STAFF: Do not release the inmate until after BPT and Governor's review.****X PAROLE GRANTED**

If this decision is final, you WILL get a parole date. The Board will send you a copy of the decision. If this decision is changed, you will be told why. The Board may set up another hearing if the decision is changed or taken away.

A. Base time in prison..... 228 Months

<u>130247</u>	<u>01</u>	<u>MURKIN 2 USC FA</u>
Case #	Count #	Offense

B. Time for using a weapon..... + 12 Months

C. Time for other crimes..... + _____ Months

Case #	Count #	Offense	Months
--------	---------	---------	--------

Case #	Count #	Offense	Months
--------	---------	---------	--------

Case #	Count #	Offense	Months
--------	---------	---------	--------

D. Total term..... 240 MonthsE. Time credit from 08/28/86 to 08/10/06 76 Months
(Life term start date) (Date of hearing)F. = 164 Months

NOTE: This is not a final decision. Do not break any rules in California Code of Regulations, Title 15, Section 2451. If you break any rules, your release date may be changed or taken away.

HEARING PANELName Jad Chunn Date 08/10/06Name AB Date 08/10/06Name AB Date 08/10/06

NAME	CDC#	PRISON	DATE
<u>LOPEZ, Jesus</u>	<u>d 37180</u>	<u>CTF</u>	<u>08/10/06</u>

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration) CDC Number D-37180
Hearing of:)
)
JESUS LOPEZ)

LAW OFFICE

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

AUGUST 10, 2006

9:02 A.M.

PANEL PRESENT:

JACK GARNER, Presiding Commissioner
JEFF SELLWOOD, Deputy Commissioner

OTHERS PRESENT:

JESUS LOPEZ, Inmate
MARY ANN TARDIFF, Attorney for Inmate
DAVID UGALDE, Interpreter
CORRECTIONAL OFFICER, Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

 No See Review of Hearing
 Yes Transcript Memorandum

Marsha Mees, Peters Shorthand Reporting

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1 **P R O C E E D I N G S**

2 [Thereupon, inability to hear inmate,
3 malfunction with microphones and/or recording
4 equipment resulted in excessive indiscernibles.]

5 **DEPUTY COMMISSIONER SELLWOOD:** We are on
6 the record.

7 **PRESIDING COMMISSIONER GARNER:** Do you
8 solemnly swear or affirm that the translation
9 service you provide at this hearing, Spanish to
10 English, English to Spanish will be done to be
11 best of your ability?

12 **INTERPRETER UGALDE:** Yes.

13 **PRESIDING COMMISSIONER GARNER:** Very
14 good. Thank you. Good morning everyone. This
15 is a subsequent parole consideration hearing for
16 Jesus Lopez. Lopez is a Z at the end. D like
17 David 37180. The date today is Thursday,
18 August 10, 2006. It's 9:02 a.m. We're located
19 at the Correctional Training Facility in
20 Soledad. The date today is August -- excuse me.
21 The inmate was received on August 28, 1986 from
22 San Francisco County. The offense is murder in
23 the second degree with the use of a firearm.
24 Case number is 120247, count number one, PC 187
25 in the second and 12022.5. The term was 17
26 years to life. And the minimum eligible parole
27 date was May 7, 1996. Other commitment offenses

1 include use of a firearm, PC 12022.5, same
2 county, same case number, and that's count
3 number two. Also ADW, PC 245(a)(2), same
4 county, same case number, and that's also count
5 number two. This hearing's going to be tape
6 recorded and for purposes of voice
7 identification each of us at the table is going
8 to be required to give our first name, last
9 name, spelling the last name. When we get to
10 you, Mr. Lopez, if you'd also give your CDC
11 number please. I'll start and go to my left.
12 I'm Jack Garner, G-A-R-N-E-R, Commissioner.

13 **DEPUTY COMMISSIONER SELLWOOD:** Jeff
14 Sellwood, S-E-L-L-W-O-O-D, Deputy Commissioner.

15 **ATTORNEY TARDIFF:** Mary Ann Tardiff,
16 T-A-R-D-I double F, attorney for Mr. Lopez.

17 **INMATE LOPEZ:** Jesus Lopez. L-O-P-E-Z.
18 D-37190 [sic].

19 **INTERPRETER UGALDE:** David Ugalde,
20 U-G-A-L-D-E, (indiscernible) county,
21 interpreter.

22 **PRESIDING COMMISSIONER GARNER:** Very
23 good. Thank you. And for the record we do have
24 two correctional peace officers in the room for
25 purposes of security. Okay. Mr. Lopez and
26 Ms. Tardiff, I have in front of me the Board of
27 Prison Terms form for providing assistance,

1 reasonable accommodation that's associated with
2 Americans With Disabilities Act. And Mr. Lopez
3 signed this form on March 1, 2006 indicating on
4 this form that he didn't need help for the
5 parole hearing. There was also another form
6 where he had requested the services of an
7 interpreter. On that one it indicated that you
8 speak and understand English but the interpreter
9 would be helpful for legal terms and things such
10 as that. Is that correct?

11 **INMATE LOPEZ:** That's correct.

12 **PRESIDING COMMISSIONER GARNER:** Okay.

13 Also noted no disabilities identified from the
14 file review and a reading level of 12.9 and a
15 GED is noted. So just to put on the record and
16 make sure there's nothing else that's happened
17 since March of this year, have you developed any
18 other condition in seeing or hearing that we
19 could provide you an accommodation?

20 **INMATE LOPEZ:** No, Sir.

21 **PRESIDING COMMISSIONER GARNER:** One other
22 -- Do you take any prescription medications for
23 --

24 **INMATE LOPEZ:** No.

25 **PRESIDING COMMISSIONER GARNER:** No.

26 Okay.

27 **INMATE LOPEZ:** Except for the heartworms.

1 For the heartworms.

2 **INTERPRETER UGALDE:** Heartburn.

3 **PRESIDING COMMISSIONER GARNER:**

4 Heartburn. Okay. Okay.

5 **ATTORNEY TARDIFF:** It's this fine

6 institutional food probably.

7 **INMATE LOPEZ:** Yes.

8 **PRESIDING COMMISSIONER GARNER:** All
9 right. Thank you. All right. ADA sufficiently
10 addressed, Ms. Tardiff?

11 **ATTORNEY TARDIFF:** Yes, Sir.

12 **PRESIDING COMMISSIONER GARNER:** Thank
13 you. This hearing is being conducted pursuant
14 to Penal Code section 3041 and 3042 and the
15 rules and regulations of the Board of Parole
16 Hearings governing parole consideration hearings
17 for life inmates. The purpose of today's
18 hearing is to consider your suitability for
19 parole. In doing so, we'll consider the number,
20 the nature of the crimes you were committed for,
21 your prior criminal and social history and your
22 behavior and programming since your commitment.
23 We have had the opportunity to review your
24 Central File and your prior hearing transcript.
25 You'll be given the opportunity to correct or
26 clarify the record. We'll consider your
27 progress since your commitment and since your

1 last hearing. Your updated counselor's report
2 and psychological report will also be
3 considered. And any change in your parole plans
4 should be brought to our attention. We will
5 reach a decision today and inform you whether or
6 not we find you suitable for parole and the
7 reasons for our decision. If you are found
8 suitable for parole, the length of your
9 confinement will be explained to you. This
10 hearing will be conducted in two phases. I'll
11 discuss with you the crime you were committed
12 for, your prior criminal and social history,
13 your parole plans and any letters of support or
14 opposition that may be in the file.
15 Commissioner Sellwood will discuss with you your
16 progress since your commitment, your counselor's
17 report and your psychological evaluation. Once
18 that's concluded, the Commissioners and your
19 attorney will be given the opportunity to ask
20 you questions. Before we recess for
21 deliberations, your attorney and you will be
22 given an opportunity to make a final statement
23 regarding your parole suitability. Your
24 statement should be directed to why you feel
25 you're suitable for parole. We will then
26 recess, clear the room and deliberate. Once
27 we've completed our deliberations, we'll resume

1 the hearing and announce our decision. The
2 California Code of Regulations states regardless
3 of time served a life inmate shall be found
4 unsuitable for and denied parole if in the
5 judgment of the Panel the inmate would pose an
6 unreasonable risk of danger to society or a
7 threat to public safety. You also have the
8 right to have a timely notice to the hearing,
9 the right to review your Central File and the
10 right to present relevant documents. And I'd
11 ask you at this time have those rights been met?

12 **INMATE LOPEZ:** Yes.

13 **PRESIDING COMMISSIONER GARNER:** Okay.

14 You also have a right to be heard by an
15 impartial Panel and today your Panel will
16 consist of myself and Commissioner Sellwood.
17 Any objection to the Panel?

18 **INMATE LOPEZ:** No, Sir.

19 **PRESIDING COMMISSIONER GARNER:** Okay.

20 You will receive a copy of our written tentative
21 decision today. That decision is subject to
22 review by the Decision Review Unit. It'll
23 become effective within 120 days. And it's also
24 subject to review by the Governor. And a copy
25 of the decision and a copy of the transcript
26 will also be sent to you in the future. You
27 might recall from one of your previous hearings,

1 in May 2004 your appeal procedures changed. If
2 you want to appeal a Panel decision now you have
3 to go through the courts. Were you aware of
4 that?

5 **INMATE LOPEZ:** I was.

6 **PRESIDING COMMISSIONER GARNER:** Okay.

7 And you're not required to admit your offense or
8 discuss your offense if you do not wish to do
9 so. However, this Panel does accept as true the
10 findings of the court and you're invited to
11 discuss the facts and circumstances of the
12 offense if you desire. The Board will review
13 and consider any prior statements you've made
14 regarding the offense in determining your
15 suitability for parole. And at this time I'll
16 ask Commissioner Sellwood if there's any
17 confidential material in the Central File and if
18 we'll be using it?

19 **DEPUTY COMMISSIONER SELLWOOD:** None at
20 all.

21 **PRESIDING COMMISSIONER GARNER:** Okay.
22 Very good. Hearing checklist make it over there
23 somewhere? I think it's over here to the side.
24 You got everything?

25 **ATTORNEY TARDIFF:** I do have everything.

26 **PRESIDING COMMISSIONER GARNER:** All
27 right.

1 **ATTORNEY TARDIFF:** Thank you.

2 **PRESIDING COMMISSIONER GARNER:** All
3 right. Thank you. And other than the documents
4 that you provided to me before the hearing,
5 anything additional today?

6 **ATTORNEY TARDIFF:** Not unless something
7 comes up in the hearing there isn't anything.

8 **PRESIDING COMMISSIONER GARNER:** All
9 right. Any preliminary objections?

10 **ATTORNEY TARDIFF:** No, Sir.

11 **PRESIDING COMMISSIONER GARNER:** Mr. Lopez
12 be speaking with us today?

13 **ATTORNEY TARDIFF:** Yes.

14 **PRESIDING COMMISSIONER GARNER:** All
15 right. Mr. Lopez, could I get you to raise your
16 right hand please. Do you solemnly swear or
17 affirm that the testimony you give at this
18 hearing will be the truth, the whole truth and
19 nothing but the truth?

20 **INMATE LOPEZ:** The truth, yes.

21 **PRESIDING COMMISSIONER GARNER:** All
22 right. Thank you. Okay. Let me put on the
23 record a summary of the commitment offense. And
24 this summary is coming from a Board report that
25 was prepared for the June 2006 calendar and this
26 report was prepared by Correctional Counselor
27 Arno, A-R-N-O.

1 "Prior to 1:45 a.m. on October 26,
2 1983 Lopez and two other male
3 suspects entered the 20 Bar Club
4 and began drinking beer. One of
5 Lopez's companions got into an
6 argument with one of the victims.
7 Lopez's companion walked over to
8 Lopez, conversed with him and then
9 walked out of the bar. Upon the
10 return of his companion, Lopez
11 shot Robert or excuse me it's
12 Roberto -- copy is bad -- Barajas,
13 B-A-R-A-J-A-S, with a .32 caliber
14 pistol. The victim fell to the
15 floor. According to witnesses,
16 Lopez shot him three more times.
17 The first bullet entered below the
18 right ear. The second entry was
19 noted in the midline of the neck
20 and the third shot entered the
21 right chest area. The fourth shot
22 entered the abdomen resulting in
23 victim Barajas' death. Lopez was
24 also identified shooting another
25 victim during the gunfire. Victim
26 Guadalupe Olmedo, O-L-M-E-D-O,
27 sustained multiple gunshot wounds.

1 Lopez and his companions fled the
2 bar and escaped in a late 70's
3 model vehicle which according to
4 witnesses was parked in front of
5 the club. Lopez remained at large
6 from October 26, 1983 until his
7 apprehension by immigration and
8 naturalization officials in August
9 25 -- excuse me -- on August 25,
10 1985."

11 Okay. All right. Let me --

12 **INMATE LOPEZ:** I have a question, you
13 said 1985 or 1986?

14 **PRESIDING COMMISSIONER GARNER:** The
15 apprehension by INS?

16 **INMATE LOPEZ:** Yes.

17 **PRESIDING COMMISSIONER GARNER:** On my
18 report it says 1985.

19 **INMATE LOPEZ:** That's correct.

20 **PRESIDING COMMISSIONER GARNER:** Is that
21 correct? Okay. All right. Well let me start
22 by asking, that's a fairly short version of a
23 crime summary. Is it -- Is it an accurate
24 version?

25 **INMATE LOPEZ:** That's correct.

26 **PRESIDING COMMISSIONER GARNER:** All
27 right. Let me ask you a couple of other

1 questions then. Prior to going to this bar, had
2 you been drinking before that?

3 **INMATE LOPEZ:** Yes.

4 **PRESIDING COMMISSIONER GARNER:** Had you
5 been using any drugs?

6 **INMATE LOPEZ:** (Indiscernible).

7 **PRESIDING COMMISSIONER GARNER:** All
8 right. And this victim, Mr. Barajas, had you
9 ever met him before this evening?

10 **INMATE LOPEZ:** Never.

11 **PRESIDING COMMISSIONER GARNER:** When one
12 of your companions had the argument with
13 Mr. Barajas --

14 **INMATE LOPEZ:** No, Sir.

15 **PRESIDING COMMISSIONER GARNER:** No one
16 had an argument?

17 **INMATE LOPEZ THROUGH INTERPRETER:** Just
18 myself.

19 **PRESIDING COMMISSIONER GARNER:** All
20 right. So you had an argument with Mr. Barajas?

21 **INMATE LOPEZ:** I did.

22 **PRESIDING COMMISSIONER GARNER:** Okay.

23 Were you armed with a .32 caliber when you
24 walked into the bar?

25 **INMATE LOPEZ:** Not the first time.

26 **PRESIDING COMMISSIONER GARNER:** So you
27 had to leave the bar and go obtain the weapon?

1 **INMATE LOPEZ:** That's correct, Sir.

2 **PRESIDING COMMISSIONER GARNER:** Where was
3 the weapon?

4 **INMATE LOPEZ:** Inside the car.

5 **PRESIDING COMMISSIONER GARNER:** It was in
6 the car. And how did you -- how did you get
7 this weapon?

8 **INMATE LOPEZ:** I buy it on the street.

9 **PRESIDING COMMISSIONER GARNER:** Bought it
10 on the street. Okay. Had you ever shot the
11 weapon before?

12 **INMATE LOPEZ:** No, Sir.

13 **PRESIDING COMMISSIONER GARNER:** Had you
14 ever shot a weapon similar to that before?

15 **INMATE LOPEZ:** No, Sir.

16 **PRESIDING COMMISSIONER GARNER:** And was
17 this a semiautomatic or a revolver?

18 **INMATE LOPEZ:** Semi.

19 **PRESIDING COMMISSIONER GARNER:** Semi.
20 And when you obtained it from the vehicle, did
21 you know it was loaded?

22 **INMATE LOPEZ:** Yes.

23 **PRESIDING COMMISSIONER GARNER:** Had you
24 personally at some point loaded the weapon?
25 Maybe not that day but before that?

26 **INMATE LOPEZ:** Yes, Sir, I
27 (indiscernible).

1 **PRESIDING COMMISSIONER GARNER:** You
2 didn't load it that -- at the time of the
3 shooting?

4 **INMATE LOPEZ:** No, no, no.

5 **PRESIDING COMMISSIONER GARNER:** Okay.

6 You just went and got the weapon?

7 **INMATE LOPEZ:** Yes.

8 **PRESIDING COMMISSIONER GARNER:** Was --
9 Mr. Barajas, any indication he was drunk?

10 **INMATE LOPEZ:** Yes, he was drunk.

11 **PRESIDING COMMISSIONER GARNER:** And what
12 was the size difference between you and
13 Mr. Barajas? Who was bigger?

14 **INMATE LOPEZ THROUGH INTERPRETER:**

15 Remember that we were the same.

16 **PRESIDING COMMISSIONER GARNER:** About the
17 same. Okay. Mr. Barajas threatened you?

18 **INMATE LOPEZ:** I feel that way, yes.

19 **PRESIDING COMMISSIONER GARNER:** What did
20 he say specifically that made you feel that way?

21 **INMATE LOPEZ THROUGH INTERPRETER:** I saw
22 his friends that they were encouraging him. He
23 started talking -- naming my mother and I
24 couldn't control those words -- word and I felt
25 attacked.

26 **PRESIDING COMMISSIONER GARNER:** Okay.

27 What was the initial argument about?

1 **INMATE LOPEZ:** It was all about why you
2 looking at me and so on, why is -- just --

3 **INMATE LOPEZ THROUGH INTERPRETER:** Why
4 are you looking at me? Why do you come over
5 here?

6 **INMATE LOPEZ:** To this place. To this
7 place.

8 **INMATE LOPEZ THROUGH INTERPRETER:** It get
9 started like that.

10 **PRESIDING COMMISSIONER GARNER:** And had
11 you ever been to this bar before?

12 **INMATE LOPEZ:** Never, Sir.

13 **PRESIDING COMMISSIONER GARNER:** Did the
14 people in the bar seem to know Mr. Barajas?

15 **INMATE LOPEZ:** I believe so, yes.

16 **PRESIDING COMMISSIONER GARNER:** Okay. So
17 in response to the threat that you felt, you
18 went out and got your gun?

19 **INMATE LOPEZ:** That's correct.

20 **PRESIDING COMMISSIONER GARNER:** Did you
21 ever think about just leaving?

22 **INMATE LOPEZ:** Never. Never.

23 **PRESIDING COMMISSIONER GARNER:** And is it
24 correct that you were there with companions?

25 **INMATE LOPEZ:** That's correct.

26 **PRESIDING COMMISSIONER GARNER:** Two
27 people were with you?

1 **INMATE LOPEZ:** That's correct -- correct.

2 **PRESIDING COMMISSIONER GARNER:** And they
3 had also been drinking with you before going to
4 the bar?

5 **INMATE LOPEZ:** Yes.

6 **PRESIDING COMMISSIONER GARNER:** And the
7 second victim, Guadalupe Olmedo, you didn't --
8 did you know her?

9 **INMATE LOPEZ:** No.

10 **PRESIDING COMMISSIONER GARNER:** And my
11 understanding from reading some of the reports
12 that that was not an intended victim, you didn't
13 intend to shoot her?

14 **INMATE LOPEZ:** Never, Sir.

15 **PRESIDING COMMISSIONER GARNER:** All
16 right. But you did intend to shoot Mr. Barajas?

17 **INMATE LOPEZ:** Yes.

18 **PRESIDING COMMISSIONER GARNER:** Okay.

19 And at some point after the shooting you fled.
20 The vehicle was out front. And I believe that
21 -- that the October 25 arrest by the INS
22 coincides with an arrest for smuggling aliens,
23 is that correct?

24 **INMATE LOPEZ:** Was in August. Wasn't
25 October. Was in August.

26 **INTERPRETER UGALDE:** He said it was in
27 August.

1 **PRESIDING COMMISSIONER GARNER:** August.

2 **INMATE LOPEZ:** That's correct.

3 **PRESIDING COMMISSIONER GARNER:** And this
4 was in Texas?

5 **INMATE LOPEZ:** In Texas.

6 **PRESIDING COMMISSIONER GARNER:** Okay. So
7 that's where they found out you had the warrant
8 and you were wanted in San Francisco.

9 **INMATE LOPEZ:** Yes.

10 **PRESIDING COMMISSIONER GARNER:** And you
11 were returned to San Francisco.

12 **INMATE LOPEZ:** Correct.

13 **PRESIDING COMMISSIONER GARNER:** Okay.
14 Any of your companions get charged with anything
15 on this?

16 **INMATE LOPEZ:** No, Sir.

17 **PRESIDING COMMISSIONER GARNER:** They
18 weren't known, were they?

19 **INMATE LOPEZ:** Yes.

20 **PRESIDING COMMISSIONER GARNER:** The
21 police knew who they were. Okay. Well, I'm
22 just curious about that. It doesn't have
23 anything to do with you today. What did you do
24 with the weapon after the shooting?

25 **INMATE LOPEZ:** I left it at the house.

26 **PRESIDING COMMISSIONER GARNER:** Where
27 were you living at that time?

1 **INMATE LOPEZ:** Fifteenth Street, 1470.

2 **PRESIDING COMMISSIONER GARNER:** In San
3 Francisco?

4 **INMATE LOPEZ:** San Francisco.

5 **PRESIDING COMMISSIONER GARNER:** So when
6 you left town, you left the weapon there?

7 **INMATE LOPEZ:** Yes, Sir.

8 **PRESIDING COMMISSIONER GARNER:** And your
9 intent in leaving is to get away from the
10 charges?

11 **INMATE LOPEZ:** Yes, in one way, yes. And
12 I was so --

13 **INMATE LOPEZ THROUGH INTERPRETER:**

14 Shocked by the (indiscernible).

15 **PRESIDING COMMISSIONER GARNER:** Okay.

16 When did you learn that Mr. Barajas died?

17 **INMATE LOPEZ:** The next day.

18 **PRESIDING COMMISSIONER GARNER:** And how
19 did you hear?

20 **INMATE LOPEZ:** Through the TV.

21 **PRESIDING COMMISSIONER GARNER:** You saw
22 it on TV?

23 **INMATE LOPEZ:** Yes.

24 **PRESIDING COMMISSIONER GARNER:** And the
25 TV had enough on the screen that you knew the
26 location, you put two and two together and
27 figured that was the one you did?

1 **INMATE LOPEZ:** Well I remember that day
2 so I see that. I see the sign of the club.

3 **PRESIDING COMMISSIONER GARNER:** And the
4 story included the fact that he had died. Okay.
5 All right. We already talked about the
6 non-controlling case, which is the one we read
7 in the record, and that was the Guadalupe
8 Olmedo, which is -- those charges are going to
9 run concurrent to what you're doing on the life
10 crime. And we've already talked your only other
11 adult arrest, which was in Texas for the issues
12 with the aliens which got you back here. Okay.
13 Okay. Let's go then to your personal life okay.
14 You're one of eight children that were born to
15 Rafael and how do you pronounce your mother's
16 name?

17 **INMATE LOPEZ:** Auxiliadora.

18 **PRESIDING COMMISSIONER GARNER:**

19 Auxiliadora, A-U-X-I-L-I-A-D-O-R-A. Does she
20 have a shorter nickname?

21 **INMATE LOPEZ:** Maria.

22 **PRESIDING COMMISSIONER GARNER:** Okay.

23 Okay if I use Maria if I have to say it again?
24 Thank you. And Banuelas, B-A-N-U-E-L-A-S, is
25 the -- is the last name. And that you were born
26 on September 21, 1960.

27 **INMATE LOPEZ:** That's correct.

1 **PRESIDING COMMISSIONER GARNER:** In
2 Durango. All right. And family resources were
3 limited and you left Mexico at the age of 19 to
4 start earning a living. Is that correct?

5 **INMATE LOPEZ:** That is correct.

6 **PRESIDING COMMISSIONER GARNER:** Okay.

7 And you graduated from high school in Mexico.

8 **INMATE LOPEZ:** (Indiscernible).

9 **PRESIDING COMMISSIONER GARNER:** And the
10 report indicates that you -- you came in
11 illegally. Okay. Did you come in by yourself
12 or did you pay someone to bring you in?

13 **INMATE LOPEZ:** No, I come by myself.

14 **PRESIDING COMMISSIONER GARNER:** By
15 yourself. Okay. And you went to Colorado.

16 **INMATE LOPEZ:** I went to Colorado.

17 **PRESIDING COMMISSIONER GARNER:** How did
18 you pick Colorado? Friends, family there?

19 **INMATE LOPEZ:** It was my brother over
20 there.

21 **PRESIDING COMMISSIONER GARNER:** All
22 right.

23 **INMATE LOPEZ:** I just stay for a little
24 while, a couple of months and went back to --

25 **PRESIDING COMMISSIONER GARNER:** Okay.
26 That's -- indication that you returned to Mexico
27 and you married your wife Magdalena,

1 M-A-G-D-A-L-E-N-A, and moved to San Francisco in
2 1979.

3 **INMATE LOPEZ:** That's correct.

4 **PRESIDING COMMISSIONER GARNER:** And you
5 lived in the Mission District and worked as a
6 butcher's helper for the Marshall,
7 M-A-R-S-H-A-L-L, & Henry Company and in '79 it
8 says you were making about 200 a week?

9 **INMATE LOPEZ:** Close to 300.

10 **PRESIDING COMMISSIONER GARNER:** Close to
11 300. Back in '79 that was pretty good money.

12 **INMATE LOPEZ:** (Indiscernible).

13 **PRESIDING COMMISSIONER GARNER:** Yeah.

14 And you have one child by the name of Rafael
15 born in San Francisco. And then after the
16 incident that you fled back to Mexico and worked
17 in a variety of part-time jobs but there wasn't
18 enough to support you and that you were en route
19 to Texas when you were apprehended by the
20 immigration officers. And substance abuse,
21 occasional marijuana, cocaine, alcohol, all in
22 the past. When did you start -- Let me ask when
23 you first start using drugs?

24 **INMATE LOPEZ:** Well I just tasting so I
25 don't really --

26 **PRESIDING COMMISSIONER GARNER:** So you --

27 **INMATE LOPEZ:** -- wasn't addicted to

1 marijuana or cocaine. I just taste it maybe
2 that night when I commit the crime. But I
3 (indiscernible) Tequila or (indiscernible), yes,
4 (indiscernible).

5 **PRESIDING COMMISSIONER GARNER:** All
6 right. And the night of the crime that you'd
7 been drinking heavily prior to the incident.
8 Was there some reason that night that you'd been
9 drinking more heavily?

10 **INMATE LOPEZ:** No, it just was because I
11 was (indiscernible).

12 **PRESIDING COMMISSIONER GARNER:** Was
13 Magdalena home while you were out drinking?

14 **INMATE LOPEZ:** Yes.

15 **PRESIDING COMMISSIONER GARNER:** And she
16 was home with Rafael.

17 **INMATE LOPEZ:** Yes.

18 **PRESIDING COMMISSIONER GARNER:** But you
19 were out with a couple of your friends --

20 **INMATE LOPEZ:** Yes.

21 **PRESIDING COMMISSIONER GARNER:** --
22 drinking.

23 **INMATE LOPEZ:** Yes, Sir.

24 **PRESIDING COMMISSIONER GARNER:** And whose
25 vehicle was it that you were in?

26 **INMATE LOPEZ:** My friend's.

27 **PRESIDING COMMISSIONER GARNER:** Your

1 friend's. Okay. And that in the past you
2 didn't want to accept that you had a problem
3 with alcohol but you started going to AA and it
4 made you realize that you did. Is that true?

5 **INMATE LOPEZ:** That's correct.

6 **PRESIDING COMMISSIONER GARNER:** Okay.

7 Any time while you were in Mexico as a child
8 were you ever hospitalized for anything?

9 **INMATE LOPEZ:** No, Sir.

10 **PRESIDING COMMISSIONER GARNER:** Never
11 been in the hospital. Okay. So far as the
12 parole plans, and I have to go back to a Board
13 report from 2003 but I think they're still
14 relevant, that you'd be residing with your
15 mother Maria Lopez in Durango. Family owns a
16 ranch there.

17 **INMATE LOPEZ:** That's correct, Sir.

18 **PRESIDING COMMISSIONER GARNER:** And that
19 you would continue to be involved with AA in
20 Mexico. And there's an address noted for AA in
21 Durango. So far as employment that you'd seek
22 employment in the auto mechanics field with the
23 skills that you learned with CDC and we'll let
24 Commissioner Sellwood get more into some of your
25 vocation stuff a little bit later in the
26 hearing. Let me go ahead and put on the record
27 the letters that were given to me today by Miss

1 Tardiff. The first one is a memo and it's on
2 State letterhead and this is from the PIA and
3 it's done by Charlie Walker. And Charlie is
4 C-H-A-R-L-I-E and again it's dated June 9. And
5 inform the Panel that you would be provided with
6 the former PIA worker card indicating the
7 following. That the -- That you have a work
8 history with PIA where you've learned specific
9 job skills and developed valuable work habits in
10 a businesslike setting. And it provides the
11 contact points so that the employer and anyone
12 else that wants to learn, which you did, would
13 be available to them. And gives the number for
14 the employment program coordinator. Okay. Do
15 the one from your mother next. And this one is
16 dated June 25, 2006. It's a typed letter and
17 signed. And it's again asking for a favorable
18 decision, granting you a second chance at
19 liberty. She knows about the errors that you've
20 committed, that you're a good person. It talks
21 about your rehabilitation, that you've been
22 molded into a better man that's accepted his
23 errors and demonstrated great remorse for them.
24 And having you home will be beneficial to the
25 family and the community. You've learned to be
26 a provider and honest, respectable person.
27 Those attributes will help the family very much

1 and because of what you've done the community --
2 it'll be an example to the community. And it
3 speaks to your workday, speaking to some of the
4 crops they have on the farm, corn, beans and hay
5 and also the farm stock. You have her total
6 support and help as well as home, food,
7 clothing, transportation and the work that's
8 provided. So we have an offer from your mother
9 of housing, support and employment. I have a
10 June 29, 2006 typed letter from Lazaro Rayes,
11 R-A-Y-E-S, Lazaro is L-A-Z-A-R-O. He's a
12 realtor, has been for 15 years. Writing to
13 request that you get a second chance to be free,
14 it's been lost time, that you've paid your debt
15 and learned a harsh lesson, family, friends are
16 very committed to help you reenter. They're
17 willing to help with employment, housing, job
18 training and anything else. And it speaks to
19 your positive contributions while you've been in
20 the facility and he's writing as a taxpayer and
21 a Vietnam veteran, seen a lot of waste, that you
22 could also become a taxpayer and not a tax
23 depleter. And how do you know Mr. Rayes?

24 **INMATE LOPEZ:** Through my mom.

25 **PRESIDING COMMISSIONER GARNER:** Okay.

26 Okay. The next one is from a Luis

27 (indiscernible) and I can't make -- is that

1 another name after (indiscernible) or is it just
2 -- there's something underneath the stamp and I
3 can't tell what it is.

4 **INMATE LOPEZ:** Their last name is Acosta.

5 **PRESIDING COMMISSIONER GARNER:** Okay.

6 It's dated June 26 and he's an official
7 representative of the small honest community of
8 (indiscernible). He's writing brief words to
9 indicate the support, that he's known you since
10 childhood. Talks to the error that you made but
11 you'll be positive and cooperative with the
12 community and you have and always will have the
13 sympathy and respect of all the community.

14 Asking that a favorable decision to give you a
15 second chance and they're committed to help you
16 return back to normal life. As a judge in the
17 community he's committed himself along with his
18 staff in assuring that you'll have a place to
19 work so that you can help with the economic
20 needs and also help with the city's economy with
21 your own work ethic. And again hoping that
22 we'll render a favorable decision to have you
23 return back with them. And my last one is from
24 Martin Lopez Betancourt, B-E-T-A-N-C-O-U-R-T,
25 and from Durango and I'll see if there's a date
26 on it. June 26, 2006. Writing a letter of
27 support to my nephew. Speaking to the hope that

1 you'll be granted a date. Let's see. And would
2 provide for him encouragement, support, a career
3 and a home and community that was the community
4 of your youth and that you grew up with his
5 children, they consider you more than a nephew,
6 more like a son. He has nephews but you've
7 become the favorite one. Speaks to the mistake
8 that you made but given the chance as you grow
9 up, grow older, grow wiser and more aware --
10 accepting your responsibility. He knows that
11 you'll be a productive member of our small
12 community. Again it speaks to it being small,
13 close knit and rural. And despite your mistakes
14 that you're a good boy, concerned citizen and an
15 empathetic person. Talks to your AA and speaks
16 to those seeds that you have made will be
17 sprouted into real life changing forces. And
18 you realize your true potential. Says entire
19 community -- willing and waiting, wanting to
20 support Jesus in all he will need to begin a new
21 life upon parole. He already has a place to
22 live, a good job working on and with me at the
23 family ranch which has been in the family for
24 generations. And he basically says that he can
25 promise us that with all certainty that you will
26 not willingly break the law nor return to the
27 United States. And he says only a fool makes

1 you'll be granted a date. Let's see. And would
2 provide for him encouragement, support, a career
3 and a home and community that was the community
4 of your youth and that you grew up with his
5 children, they consider you more than a nephew,
6 more like a son. He has nephews but you've
7 become the favorite one. Speaks to the mistake
8 that you made but given the chance as you grow
9 up, grow older, grow wiser and more aware --
10 accepting your responsibility. He knows that
11 you'll be a productive member of our small
12 community. Again it speaks to it being small,
13 close knit and rural. And despite your mistakes
14 that you're a good boy, concerned citizen and an
15 empathetic person. Talks to your AA and speaks
16 to those seeds that you have made will be
17 sprouted into real life changing forces. And
18 you realize your true potential. Says entire
19 community -- willing and waiting, wanting to
20 support Jesus in all he will need to begin a new
21 life upon parole. He already has a place to
22 live, a good job working on and with me at the
23 family ranch which has been in the family for
24 generations. And he basically says that he can
25 promise us that with all certainty that you will
26 not willingly break the law nor return to the
27 United States. And he says only a fool makes

1 the same mistake twice. And then thanks us for
2 our concern and time. Okay. Those are the
3 recent letters we have? Okay.

4 **ATTORNEY TARDIFF:** I'd also like to add
5 that I placed a phone call to his family in
6 Durango through an interpreter, not a certified
7 interpreter but someone that I work with, to
8 verify the letters from '05. And they stated
9 that everything was current and that they
10 strongly support Mr. Lopez.

11 **PRESIDING COMMISSIONER GARNER:** Okay.
12 Thank you. I also want to put on the record
13 that insomuch as -- last hearing on June 30,
14 2005 I did read the transcript with respect to
15 this particular section of the hearing. I did
16 that because there's a rather large number of
17 letters that were sent for the last hearing and
18 frankly I was really hoping we didn't get this
19 many this time that I have to read. Thank you.
20 But it does acknowledge the nature and intent of
21 all of the letters. And since they are fairly
22 recent I want to make sure that we have on the
23 record that this is a sustained, ongoing pattern
24 of support. Okay. Mr. Lopez, at this time I'm
25 going to ask you to direct your attention over
26 here to Commissioner Sellwood.

27 **DEPUTY COMMISSIONER SELLWOOD:** Good

1 morning, sir.

2 **INMATE LOPEZ:** Good morning.

3 **DEPUTY COMMISSIONER SELLWOOD:** As
4 happened to me yesterday, I made a mistake and
5 everyone pointed it out. So please feel free to
6 do so if that happens again. So what I'm going
7 to do is review quite a bit of information and
8 either fill in anything I've left out or if you
9 see -- here that I've said anything incorrectly
10 go ahead and correct me. All right. Your
11 classification level is 19. Your custody level
12 is Medium A. Your last hearing was June 30,
13 '05. It was the subsequent hearing number seven
14 and resulted in a one year denial. You were
15 received at Soledad on April 12, 2000 coming up
16 from RJ Donovan. Okay. One of the best, almost
17 perfect disciplinary record, only one blotch on
18 your entire history, a 115 in June of 1988 for
19 having a radio on without headphones. And
20 that's the only 115 that you have ever received
21 and you have never received a 128. So kind of
22 like the West Point guy that gets one demerit.
23 Okay. Can't get through. I'm going to review
24 the time period since your last hearing. And --
25 takes in a little bit more than that but it's
26 the review from the counselor. It's from
27 September '04 to September '05. States that in

1 terms of vocational training there was no
2 vocational training noted in that one year time.
3 There were no academics. Work record, you
4 continue to work at the Protestant chapel as a
5 porter. Group activities. You continued your
6 participation in AA and NA. And I wanted to ask
7 you a question about that. I also have some
8 more updated chronos which were provided here by
9 your counsel and then I even found some more
10 that weren't provided that are past the date of
11 the last review here. And I'm just a little bit
12 confused and need to understand. From this I've
13 been able to gather that you attend a Monday
14 evening NA slash AA meeting and then you attend
15 a Wednesday day evening of the same type of
16 group and then there's mention of a third group,
17 the 12-Step program which based upon NA, AA. So
18 are there really three different programs that
19 you attend?

20 **INMATE LOPEZ:** That's correct, Sir.

21 **DEPUTY COMMISSIONER SELLWOOD:** Okay. I
22 wasn't sure if they were the same, but they are
23 three different programs?

24 **INMATE LOPEZ:** Three different programs.

25 **DEPUTY COMMISSIONER SELLWOOD:** Okay. And
26 I was able to find evidence very early in the
27 '90s of your attendance at AA. So it looks like

1 you have been attending some sort of AA, NA
2 program throughout your history of being prison.
3 Is that true? That's what the chronos say.
4 Okay. In terms of -- let's see -- the next year
5 was the September of '05 through March of '06.
6 And again vocational training none noted.
7 Academics, none noted. Work record, you were
8 moved to the east dorm and assigned to the PIA
9 wood product section as a furniture finisher.
10 Group activities, continue the AA and NA. And
11 then as I noted I have chronos all the way up to
12 the ones that your counsel provided which are
13 dated July of this year and I have others back
14 in April of this year about your continued
15 attendance at AA. I noted that there was a
16 chrono in there, there was actually several of
17 them saying that once you got into the -- it's
18 called the finish mill shop, is that right?

19 **INMATE LOPEZ:** Yes, Sir.

20 **DEPUTY COMMISSIONER SELLWOOD:** Okay. And
21 that you immediately received instruction in
22 fire safety, hand tools, portable power tools,
23 table saw, automatic feeder. You accomplished
24 all of that successfully. I noticed that there
25 was mention of prior auto mechanic courses. So
26 you took auto mechanic courses, when did you
27 take those?

1 **INMATE LOPEZ:** In Donovan.

2 **DEPUTY COMMISSIONER SELLWOOD:** At
3 Donovan. Okay. And I guess my question to you
4 is do you consider yourself to have an
5 employable vocational skill? And if so, what is
6 it? Would it be as an auto mechanic, a
7 woodworker, a landscaper? Do you have a skill
8 that you could sell out there for employment?

9 **INMATE LOPEZ THROUGH INTERPRETER:** Thanks
10 to these programs that they help me to qualify
11 and I think I could do a good job if they give
12 me the opportunity. I like the field a lot, the
13 fields. (Indiscernible) --

14 **DEPUTY COMMISSIONER SELLWOOD:**

15 (Indiscernible) --

16 **INMATE LOPEZ THROUGH INTERPRETER:** --

17 plumbing.

18 **DEPUTY COMMISSIONER SELLWOOD:** Okay.

19 Okay. So the woodworking might be more of a
20 handyman tool for you as opposed to an
21 employment?

22 **INMATE LOPEZ:** Yes, Sir.

23 **DEPUTY COMMISSIONER SELLWOOD:** Okay. And
24 your intent would be to go back to the family
25 ranch where you would use many tools and as you
26 said the fields and --

27 **INMATE LOPEZ:** Yes.

1 **DEPUTY COMMISSIONER SELLWOOD:** Okay. All
2 right. I noticed that you accomplished a GED
3 and there was some mention that you had taken I
4 thought a few college classes. Did you ever
5 take any college classes?

INMATE LOPEZ: In Mexico, yes, I did.

7 **ATTORNEY TARDIFF:** Yeah, he went to three
8 years in Mexico.

9 DEPUTY COMMISSIONER SELLWOOD: Three
10 years of college --

11 **ATTORNEY TARDIFF:** Before --

12 DEPUTY COMMISSIONER SELLWOOD: -- in
13 Mexico.

14 **ATTORNEY TARDIFF:** --- the commitment
15 offense.

16 DEPUTY COMMISSIONER SELLWOOD: Okay.

17 Okay. I also noticed that under self-help in
18 April of '06, that was more of the AA's. All
19 right. In June of '06 you took a three-hour
20 video course under the auspices of the Inmate
21 Employability program related to Anger
22 Management. And you also took a three-hour
23 video course on Reengaging Society. Okay. Then
24 presented to us today were these two items.
25 They're not dated. Is this recent work or work
26 over a long period of time?

1 recent, that one right there. And the other one
2 was about a year ago.

3 **DEPUTY COMMISSIONER SELLWOOD:** Okay. All
4 right. These are -- The first one, the Living
5 Sober, which you said was the more recent one.

6 **INMATE LOPEZ:** Yes.

7 **DEPUTY COMMISSIONER SELLWOOD:** This says
8 by AA World Services, book review by Jesus
9 Lopez. And what it is is you have -- I assume
10 all of this is your writing.

11 **INMATE LOPEZ:** Yes.

12 **DEPUTY COMMISSIONER SELLWOOD:** Okay.

13 What you have done is go through and it appears
14 respond to a variety of questions or situations
15 that the book offers and then you have put down
16 your personal response to that.

17 **INMATE LOPEZ:** That's correct, Sir.

18 **DEPUTY COMMISSIONER SELLWOOD:** Okay. A
19 somewhat anecdotally funny but also very
20 serious, you talked about going into a bar and
21 that to get a drink you would put your entire
22 life down, the cost of a drink would be your
23 entire life. And that was very, very serious.
24 On the other hand it said put a buck down for a
25 drink and I thought that was a little dated.
26 You don't put a buck down anymore.

27 **INDISCERNIBLE SPEAKER:** (Indiscernible).

1 **DEPUTY COMMISSIONER SELLWOOD:** A few more
2 dollars.

3 **INMATE LOPEZ:** Yes.

4 **DEPUTY COMMISSIONER SELLWOOD:** Yes. But
5 some very good thoughts that you had. I was
6 especially impressed by the thought that to buy
7 a drink today would cost you your life.

8 **INMATE LOPEZ:** That's correct.

9 **DEPUTY COMMISSIONER SELLWOOD:** The other
10 one, Staying Sober, A Guide For Relapse
11 Prevention by Terrance Gorsky (phonetic)
12 (indiscernible) Miller, book review by Jesus
13 Lopez, and basically the same thing. The same
14 review and personal responses.

15 **INMATE LOPEZ:** That's correct, Sir.

16 **DEPUTY COMMISSIONER SELLWOOD:** Other
17 folks may do this but I know there are times
18 when we ask people if you can't get what you
19 need from the institution do personal study in
20 your cell, do something positive. This is very
21 positive evidence that you have taken the
22 initiative to do things on your own and not just
23 say I did it but actually go through and do a
24 lot of work. There's a lot of work in each of
25 those.

26 **INMATE LOPEZ:** Thank you, Sir.

27 **DEPUTY COMMISSIONER SELLWOOD:** Very

1 positive work. I'm now going to review the
2 psychiatric reports. Now as folks here know,
3 what we have is a September of '03 report and
4 then before that we have a June 6, '02 report
5 which is basically nothing. It's a two
6 paragraph statement. Then we have a January '01
7 two paragraph statement. And then we have
8 February of 2000 assessment, then we have prior
9 assessments. What I'm going to do is I'm going
10 to back up actually four assessments to give
11 because there was a statement in the 2000 that
12 was somewhat bothersome and I wanted to review
13 and see where that was. So I'm going to start
14 off by just talking about the statement in the
15 2000 and I'll -- well in fact let me just read
16 it. Okay. Why it was potentially bothersome.
17 Okay. It's page five of the two -- make sure
18 I'm in the right one. Yeah. Okay. Page five
19 and it -- under section 14, assessment of
20 dangerousness.

21 "Mr. Lopez's violence potential
22 outside a controlled setting in
23 the past is considered to have
24 been average and at present is
25 estimated to be decreased. If
26 released to the community, he
27 would -- all probability be likely

1 to continue improvement given his
2 defined set of personal
3 expectations and goals."

4 That's not an overwhelmingly positive -- you
5 know, if released he would continue to improve,
6 it used to be average, now it's decreased. And
7 so I wanted to back up behind that and see what
8 had been said in prior times to see where that
9 came from. So I backed up a little bit to the
10 December 1998 calendar, which is a single page,
11 but at the very bottom of the page it says: "If
12 released to the community, he probably would
13 represent a low risk of danger to others as long
14 as there is no relapse into alcohol or drug
15 abuse." So that didn't seem to be what the
16 person was relying upon. So I backed up again
17 to the next one. Excuse me.

18 [Thereupon, the tape was turned over.]

19 **DEPUTY COMMISSIONER SELLWOOD:** -- record
20 on side two. So I went back to 1997 and on the
21 second page it says: "My professional opinion
22 is that inmate Lopez represents a low risk to
23 the public compared to other inmates with a
24 history of violence." So I -- having read that
25 in the 2000 report, I questioned what that meant
26 and going back to prior reports I don't see that
27 evidence of unssuredness (phonetic). Both of

1 those suggest a low chance of dangerousness. So
2 anyway, I wanted to get that on the record. And
3 then let me go ahead and read from the 2003 --
4 which is the most recent one and go ahead and
5 continue that same thought. On assessment of
6 dangerousness:

7 "His risk of violent behavior
8 within a controlled setting is
9 considered to be low compared to
10 the average level two inmate
11 population. If released to the
12 community, in light of the above
13 factors his violence potential is
14 describe -- is considered to be
15 low. Alcohol abuse is a risk
16 factor which may be a precursor to
17 violence for this individual."

18 Okay. And then from the 2003 again item number
19 12, the current mental status, Axis I, Alcohol
20 Abuse In Sustained Full Remission In A
21 Controlled Environment. Axis II, No
22 Contributory Personality Disorder. And again, I
23 did not have an Axis III or IV or V. But
24 referring back to the 2000 the GAF score was 80.
25 So I'm assuming that it has stayed somewhat the
26 same. Under the clinical observation:

27 "This inmate is competent and

1 responsible for his behavior.

2 This inmate does not have a mental
3 disorder which would necessitate
4 treatment. This inmate has a
5 significant alcohol history.

6 However, his problem appears to be
7 in remission. Continued
8 participation within AA is
9 suggestion."

10 And it says during his incarceration. I would
11 certainly add to that and for lifetime. That
12 takes care of my part, Commissioner.

13 **PRESIDING COMMISSIONER GARNER:** Around
14 the year 2000, where you assigned as an
15 electrician?

16 **INMATE LOPEZ:** That's correct.

17 **PRESIDING COMMISSIONER GARNER:** How long
18 did you work as an electrician?

19 **INMATE LOPEZ:** For about four years.

20 **PRESIDING COMMISSIONER GARNER:** Four
21 years. Okay. Is your marriage to Magdalena
22 still intact?

23 **INMATE LOPEZ:** No.

24 **PRESIDING COMMISSIONER GARNER:** No. And
25 did you divorce?

26 **INMATE LOPEZ:** Yes.

27 **PRESIDING COMMISSIONER GARNER:** And how

1 about Rafael, where's he living now?

2 **INMATE LOPEZ:** He still live in San
3 Francisco.

4 **PRESIDING COMMISSIONER GARNER:** How old
5 is he now?

6 **INMATE LOPEZ:** Twenty-five.

7 **PRESIDING COMMISSIONER GARNER:** What's he
8 doing?

9 **INMATE LOPEZ:** He works as a mechanic.

10 **PRESIDING COMMISSIONER GARNER:** Okay.

11 And I know it's probably very difficult for your
12 family in Mexico, but have you had visits from
13 anyone?

14 **INMATE LOPEZ:** My mom, she came about
15 four years ago.

16 **PRESIDING COMMISSIONER GARNER:** So she
17 was able to come up. So most of the contact is
18 by letters and telephone?

19 **INMATE LOPEZ:** Yes.

20 **PRESIDING COMMISSIONER GARNER:** And how
21 about Rafael?

22 **INMATE LOPEZ:** By telephone, telephone.

23 **PRESIDING COMMISSIONER GARNER:** Is he
24 married?

25 **INMATE LOPEZ:** No, Sir.

26 **PRESIDING COMMISSIONER GARNER:** No.

27 Okay. All right. Any follow-up questions?

1 **DEPUTY COMMISSIONER SELLWOOD:** No, Sir.

2 **PRESIDING COMMISSIONER GARNER:**

3 Ms. Tardiff, questions?

4 **ATTORNEY TARDOFF:** An issue that might
5 arise, after the commitment offense you were --
6 left the area and you went back to Mexico.

7 Correct?

8 **INMATE LOPEZ:** Correct.

9 **ATTORNEY TARDOFF:** And then you came back
10 to the United States illegally. If you were
11 paroled, and you obviously are -- Okay. First
12 of all, if you were paroled and INS did not pick
13 you up, would you still go back to Mexico?

14 **INMATE LOPEZ:** Yes.

15 **ATTORNEY TARDOFF:** Okay. Now would you
16 ever come back into the United States illegally?

17 **INMATE LOPEZ:** Never.

18 **ATTORNEY TARDOFF:** Okay. And why is
19 that?

20 **INMATE LOPEZ THROUGH INTERPRETER:**

21 Because they gave me that order not to come back
22 over here. And I have learned to obey -- My
23 plans are down there.

24 **ATTORNEY TARDOFF:** Okay. And this ranch
25 or whatever, that's family owned? You need to
26 answer.

27 **INMATE LOPEZ:** That's correct.

1 **ATTORNEY TARDIFF:** And how big is it?

2 **INMATE LOPEZ THROUGH INTERPRETER:** When I
3 came here it was about 40 acres. But I know
4 that they have bought more.

5 **ATTORNEY TARDIFF:** Do you know how many
6 people work on the ranch?

7 **INMATE LOPEZ THROUGH INTERPRETER:** I
8 don't have any idea right now.

9 **ATTORNEY TARDIFF:** Okay. Now before the
10 commitment offense, a couple of years before the
11 commitment offense, were you involved -- did
12 somebody stab you?

13 **INMATE LOPEZ:** That's correct.

14 **ATTORNEY TARDIFF:** Okay.

15 **INMATE LOPEZ THROUGH INTERPRETER:** Eleven
16 times.

17 **ATTORNEY TARDIFF:** They stabbed you 11
18 times. And that was -- you were trying to break
19 up a fight?

20 **INMATE LOPEZ:** That's correct.

21 **ATTORNEY TARDIFF:** Okay. And you almost
22 died.

23 **INMATE LOPEZ:** I almost died.

24 **ATTORNEY TARDIFF:** Did you -- And did you
25 ever get any kind of counseling or anything to
26 help you with that, what happened?

27 **INMATE LOPEZ:** No.

1 **ATTORNEY TARDIFF:** So since the time that
2 you were stabbed, were you fearful when you were
3 out in the public?

4 **INMATE LOPEZ THROUGH INTERPRETER:** Yes,
5 of course, yes. I lived scared.

6 **ATTORNEY TARDIFF:** So is that -- do you
7 think that had something to do with how you
8 perceived what was happening when you killed the
9 individual, were you maybe overreacting because
10 of the fear of the stabbing that you received?

11 **INMATE LOPEZ THROUGH INTERPRETER:** Part
12 of that (indiscernible) fearful (indiscernible)
13 to live (indiscernible) and upset.

14 **ATTORNEY TARDIFF:** So how have you gotten
15 rid of that fear or whatever?

16 **INMATE LOPEZ THROUGH INTERPRETER:** Thanks
17 to AA programs and give my life to Jesus.

18 **ATTORNEY TARDIFF:** So that's helped you
19 deal with the fear you had at the time of the
20 crime from the stabbing?

21 **INMATE LOPEZ:** (Indiscernible).

22 **ATTORNEY TARDIFF:** How though?

23 **INMATE LOPEZ THROUGH INTERPRETER:** I know
24 what's the fuel or combustible that feeds the
25 anger

26 **INMATE LOPEZ:** Anger.

27 **INMATE LOPEZ THROUGH INTERPRETER:** --

1 which is jealousy and insecurity (indiscernible)
2 forgiveness. Now I do the contrary.

3 **ATTORNEY TARDIFF:** In terms of -- Do you
4 have plans to participate in AA in Mexico?

5 **INMATE LOPEZ THROUGH INTERPRETER:** Of
6 course, yes.

7 **ATTORNEY TARDIFF:** And what are those
8 plans?

9 **INMATE LOPEZ THROUGH INTERPRETER:** The
10 plans are to start something in the community.
11 I have my godfather waiting for me with
12 literature.

13 **ATTORNEY TARDIFF:** Okay. And when you
14 say your godfather, your real godfather?

15 **INMATE LOPEZ:** No, my sponsor.

16 **ATTORNEY TARDIFF:** Your sponsor.

17 **INMATE LOPEZ:** Sponsor, that's correct.

18 **ATTORNEY TARDIFF:** Okay. Your AA
19 sponsor?

20 **INMATE LOPEZ:** Yes.

21 **ATTORNEY TARDIFF:** And you still
22 communicate with your AA sponsor?

23 **INMATE LOPEZ:** Once in awhile, yes.

24 **ATTORNEY TARDIFF:** So you're going to
25 start an AA program in your community?

26 **INMATE LOPEZ:** (Indiscernible) yes.

27 **ATTORNEY TARDIFF:** Good. Okay. I don't

1 have any other questions.

2 **PRESIDING COMMISSIONER GARNER:** Okay.

3 You want to go ahead and close.

4 **ATTORNEY TARDIFF:** Thanks. In terms of
5 Mr. Lopez's -- Well, first of all, I definitely
6 think Mr. Lopez is suitable. I thought he was
7 suitable a couple of years ago when I
8 represented him. His pre-incarceration history
9 is very favorable. He came from an intact
10 family. He worked hard, earned good money, had
11 a family, graduated from high school in Mexico,
12 had three years of college. Obviously he came
13 in illegally, but we all know why they do that,
14 to better themselves. And he did a good job on
15 bettering himself in terms of his employment,
16 etcetera. So the blemish, which I realize is
17 more than a blemish, I think some psych used
18 that yesterday, a blemish, was this commitment
19 offense. Since then he has not displayed any
20 evidence of violence. He's received one
21 administrative 115 for not having headphones.
22 That's an -- He hasn't even received a 128. He
23 has totally participated in programming. He's
24 received his GED here in the United States as
25 well as since he's been incarcerated. He does
26 have a -- completed the auto mechanics in '99.
27 PIA definitely gives him marketable skills.

1 Four years electrician, marketable skills. We
2 know his attendance in AA has been exemplary,
3 plus his own work on the book reports regarding
4 staying clean and sober. He attends three
5 groups a week involving the 12-steps. Currently
6 he's able to maintain stable social
7 relationships with his family and the community.
8 He's got an AA sponsor in Mexico that he'll be
9 in the same community with on parole. He has
10 strong family, social ties. In terms of the
11 commitment offense, he did have an insignificant
12 criminal history as a mitigating factor. I
13 would also like to submit he was, I think, under
14 some sort of chronic stress from the stabbing
15 that took place two years prior when he was
16 definitely a victim and he almost died as a
17 result of that. Never did get any counseling to
18 help deal with that, and not an excuse for what
19 he did, that's for sure, and in fact he doesn't
20 even bring it up. But I submit that I think
21 that that was probably always in back of his
22 mind. If I were stabbed 11 times and didn't get
23 any counseling, I might feel a little jumpy
24 myself. His psych evals have been very
25 supportive of release. And they have been for
26 the past 13 years. Just briefly, and I'd like
27 to also add while at the beginning he did not

1 acknowledge his culpability in the crime, but he
2 has done so since the late '80s, so it's been a
3 long time since he's really dealt with his -- In
4 December of '92, that was for the '93 hearing,
5 it states: "Due to a lack of criminal history
6 and propensity towards violence, along with his
7 improvements while in prison, his potential for
8 violence is below average in a less controlled
9 setting." Ninety-four of December, if released,
10 he should be able to maintain his gains,
11 considered for parole, dangerousness should be
12 less than for the average inmate. And they only
13 made assessments in comparison to inmate
14 population, not the free community. In January
15 of '95, Dr. Bakeman, B-A-K-E-M-A-N, stated:

16 "I have gotten to know him a
17 little because he works for the
18 chaplain where I often hold
19 meetings. He seems like a very
20 sincere and reformed young man.
21 If released, he should be able to
22 maintain these gains. If he's
23 considered for parole,
24 dangerousness -- less than for the
25 average inmate."

26 And that goes into his insight and judgment
27 appear to be much improved over that time of

1 using drugs prior to his incarceration. In '97
2 he also received a very favorable psych eval.
3 Social skills make him a very -- make a very
4 positive --

5 "His social skills make a very
6 positive impression. His insight
7 and judgment appear very
8 appropriate and well developed,
9 especially compared to his
10 youthful alcohol days. He appears
11 to be very remorseful. My
12 professional opinion is that
13 inmate Lopez represents a low risk
14 to the public compared to other
15 inmates with a history of
16 violence. He continues to give no
17 indication of any serious
18 psychiatric disorder."

19 In December of '98, his insight and judgment are
20 very adequate in relation to his commitment
21 offense, continues to display apparently sincere
22 and deep remorse for his actions. Under the
23 summary it states:

24 "Inmate Lopez has completed
25 another year of very successful
26 programming and the analysis and
27 recommendations of his last

1 psychological evaluation are still
2 valid and appropriate. He simply
3 needs to remain disciplinary-free
4 and continue with relevant
5 self-help groups."

6 And for Mr. Lopez the relevant self-help are
7 obviously the 12-step programs he's participated
8 -- If released to the community, he would
9 probably -- probably would represent a low risk
10 of danger. In the '99 psych eval states:

11 "Overall it would appear that he
12 can function well on his own and
13 become a productive member of
14 society. Mr. Lopez for all
15 intents -- intent and purposes
16 appears to be sincerely remorseful
17 for the life that he had taken as
18 well as the injury that occurred
19 as a result of his anger and lack
20 of control. It also appears that
21 he has matured and has taken
22 complete responsibility for his
23 actions. He has become an
24 independent thinker and appears to
25 have learned from his previous
26 mistakes. He has developed
27 additional coping skills as noted

1 by his avoidance of violence while
2 incarcerated, as well as succeeded
3 in a number of tasks as indicated
4 by the number of positive reports
5 from prior supervisors. If
6 released to the community, there
7 would be no major difficulties
8 which would prevent him from
9 becoming a productive member of
10 society. He has taken advantage
11 of various self-help groups in
12 dealing with substance abuse
13 recovery, maintains an ongoing
14 relationship with an outside
15 sponsor whom he contacts every
16 couple of weeks."

17 And in '03 we know he got a good psych. I'd
18 like to just add this as well, it states that:
19 "His current level of insight and
20 judgment in general and
21 specifically regarding his
22 commitment offense is good and
23 supports a positive prediction of
24 successful adaptation to community
25 living. He accepts full
26 responsibility for the death of
27 the victim."

1 Goes into insightfully how he was harboring
2 significant anger from having been stabbed
3 almost to death a couple of years prior,
4 appeared generally remorseful, fully understands
5 the damage done to the victim and the family.
6 The positive factors under assessment of
7 dangerousness, the bulk of the evidence leans
8 heavily towards a prediction of low risk for
9 future violence. He has a strong positive
10 developmental history both in social achievement
11 and academic achievement, good pre-incarceration
12 work history, no juvenile criminal history and
13 no gang involvement, no history of violent
14 behavior other than the instant offense. Goes
15 into the -- his disciplinary history. Under the
16 two risk assessments, the HCR-20 indicates a low
17 risk for future violence. Under the HARE
18 psychopathy checklist, suggests the non-presence
19 of sociopathy. Additionally, his behavior has
20 shown good programming. He showed good
21 understanding of the factors resulting in the
22 death of the victim and seemed genuinely
23 penitent. The instant offense does appear to be
24 a single event only. And his potential is
25 considered to be low, the lowest level that can
26 reason -- can be reasonably estimated. And I
27 know they added that the lowest level that can

1 be, because there was an issue at that time if
2 low -- that was taken as being negative by some
3 of the Board members. (Indiscernible) they
4 thought it should say none. So then the psychs
5 were asked to explain what they meant by low and
6 they were saying you can't get any lower than
7 lower. His Board reports up until I think it
8 was August of '04 were making assessments of
9 dangerousness. Since 2000, we have 2000, 2001,
10 2002, 2003, he received a low degree of threat
11 from his counselors. Just a couple of brief.

12 In September of '03 the counselor wrote:
13 "During the interview I noted Lopez to be very
14 upset with tears in his eyes when he spoke of
15 the victim's family and his own." In 2000 it
16 concluded:

17 "Considering the commitment
18 offense, prior record and prison
19 adjustment -- adjustment, this
20 writer believes that -- prisoner
21 would pose a low degree of threat
22 to the public at this time if
23 released from prison. He has been
24 a model inmate and has positively
25 programmed through all his years
26 of incarceration. He has gone
27 farther by being helpful and

1 caring towards his fellow inmates.

2 I believe that his success on

3 parole obviously will -- will

4 depend on his abstinence from

5 alcohol."

6 And in terms of the risk factor that's been

7 noted, I think anybody who's a recovering

8 alcoholic/addict, there is always that risk

9 factor that you have that there. You're

10 recovering. You're not cured of being an

11 alcoholic and that's always going to be a risk

12 factor. I believe that because he has such a

13 long history of positive psychs, that the '03 is

14 certainly still absolutely applicable to today's

15 hearing, a new psych eval would not change

16 anything. I know I'm not a psychologist, but

17 there's nothing to indicate any behavior to give

18 him less than what he's had for the past 13

19 years. His parole plans are positive. I

20 believe he's served enough time for the crime.

21 Last time basically he was denied based on the

22 commitment offense alone. I'm not sure, you

23 know, I don't think that that's a valid -- that

24 does not indicate that he would pose a risk to

25 society based on the commitment offense alone.

26 There's no other evidence to show that he would

27 be violent. And I submit it on that. Thank

1 you.

2 **PRESIDING COMMISSIONER GARNER:** Thank
3 you. Mr. Lopez, this is your opportunity to
4 address the Panel regarding why you feel you're
5 suitable for parole. And if it would be easier
6 for you to do it in Spanish, that's okay.

7 **ATTORNEY TARDIFF:** Can I just interrupt
8 for a minute. Did you get this Anger Management
9 that he got in '05 since his last --

10 **DEPUTY COMMISSIONER SELLWOOD:** I believe
11 I mentioned --

12 **ATTORNEY TARDIFF:** -- hearing?

13 **DEPUTY COMMISSIONER SELLWOOD:** -- the
14 Anger Management.

15 **ATTORNEY TARDIFF:** Yeah.

16 **DEPUTY COMMISSIONER SELLWOOD:** It was the
17 video class?

18 **ATTORNEY TARDIFF:** No, it's 12 weeks.

19 **DEPUTY COMMISSIONER SELLWOOD:** That's the
20 12-week one.

21 **ATTORNEY TARDIFF:** Yeah.

22 **DEPUTY COMMISSIONER SELLWOOD:** Okay. I
23 don't know that I have -- Okay.

24 **INMATE LOPEZ THROUGH INTERPRETER:** First
25 of all I want to thank you for all the things
26 that we've talked about. Personally I feel a
27 lot of pain for causing the death of

1 participation in education programs and the
2 Panel noted that although you had a high school
3 diploma from Mexico you took advantage of the
4 opportunity here and achieved a GED while
5 incarcerated. That you've participated in
6 self-help programs. The Panel noted and to your
7 credit that you've not only done one program
8 with respect to the alcohol issues, that you've
9 actually done three in a long sustained manner.
10 And that included the 12-Step program and
11 multiple other AA programs occurring on
12 different nights of the week. So far as your
13 vocational programs, you did get the vocational
14 certificate in auto mechanics and you also have
15 had institutional job assignments that will
16 provide you opportunities for marketable skills
17 upon your parole. And that includes the time
18 you spent as an electrician, the time that you
19 were in the carpentry and then also the fact
20 that you're now working as a porter with one of
21 the chaplains. The Panel noted that the offense
22 could have been committed as a result of
23 significant stress in your life and the
24 indication was that there was a life threatening
25 knife attack that you had previously suffered,
26 that you lacked a significant criminal history

1 of violent crime. This essentially was your
2 only crime. You were arrested in Texas on your
3 way back from Mexico but the essential crime was
4 the commitment offense. Because of your
5 maturation, growth and a greater understanding
6 and your advanced age the probability of
7 recidivism is reduced. You're substantially
8 older than when you came in, but you're still a
9 young man. You got a lot -- a lot of life left.
10 You've got realistic parole plans. They include
11 a job offer and family support. We know that
12 the family ranch in Mexico is waiting for you.
13 You have other marketable skills if that doesn't
14 work out or at some point the ranch is no longer
15 to -- to your liking. We also noted that you've
16 got substantial support by virtue of letters.
17 We also noted and reviewed the prior transcript
18 and volumes of letters that were submitted for
19 the hearing of June 10, 2005. That you've
20 maintained close family ties while in prison via
21 letters, visits and telephone calls. And again,
22 you noted today that despite the distance your
23 mother was able to visit you here within the
24 last few years. That you've maintained positive
25 institutional behavior, which indicates a
26 significant improvement in self-control, and to

1 your credit you have only one 115. This was in
2 1988 and it was for the offense of not wearing
3 earphones with your radio. Certainly it doesn't
4 come up on the level of violence to any degree
5 at all. That you've shown signs of remorse,
6 that you indicate you understand the nature and
7 magnitude of the offense. You've accepted the
8 responsibility for your criminal behavior and
9 you've demonstrated a desire to change toward
10 good citizenship. These demonstrations have
11 occurred in the evaluations that have been done
12 by the psychologists, the comments that have
13 been made in the Board reports and the comments
14 that were made at today's hearing. The Panel
15 concluded, excuse me. The Panel considered two
16 psychological exams. The first one being
17 September of 2003 by Dr. Reed. Dr. Reed
18 concludes in one portion of the report that you
19 appear genuinely remorseful for your crime. You
20 understand fully the damage that was done to the
21 victim and the family and you appear to be fully
22 aware how your anger, fearfulness and
23 potentially -- in a potentially dangerous
24 situation and possession of a handgun and being
25 under the influence of alcohol, those were all
26 factors that led to the death of the victim and

1 influence of alcohol in your life prior to and
2 at the time of the commitment offense. Another
3 thing the Panel's going to ask you to consider
4 and that would be after seeking legal advice is
5 that if you truly do intend to return to Mexico
6 that you consider signing a waiver not to fight
7 extradition. But I would encourage you to do
8 that after getting legal advice. Commissioner,
9 anything you want to put on the record?

10 **DEPUTY COMMISSIONER SELLWOOD:** Thank you,
11 no.

12 **PRESIDING COMMISSIONER GARNER:** All
13 right. It's 11:06. Good luck, sir.

14 **INMATE LOPEZ:** (Indiscernible).

15 **PRESIDING COMMISSIONER GARNER:** That
16 concludes this hearing.

17 ---oo---

18

19

20

21

22

23 **PAROLE GRANTED**

DEC 18 2008

24 **THIS DECISION WILL BE FINAL ON _____**

25 **YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT**

26 **DATE, THE DECISION IS MODIFIED**

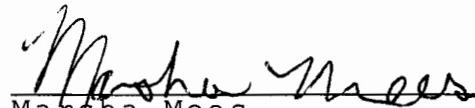
27 **JESUS LOPEZ D-37180 DECISION PAGE 8 8/10/06**

**CERTIFICATE AND
DECLARATION OF TRANSCRIBER**

I, Marsha Mees, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 62, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, at SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of JESUS LOPEZ, CDC No. D-37180 on AUGUST 10, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated August 25, 2006 at Sacramento County, California.



Marsha Mees
Transcriber
PETERS SHORTHAND REPORTING

EXHIBIT

“III”

GOVERNOR.

DURANGO, Dgo, Mexico

NOV. 3 OF 2006

AS ONE OF THE MEMBERS OF THE ALCOHOLICS ANONYMOUS
HERE IN DURANGO, MEXICO, I LET YOU KNOW THAT I AM
HERE TO SUPPORT THE FREEDOM OF MR. JESUS LOPEZ, D-37180

→ IN DISPOSEABLE ^{IN} PROPORTION TO HIM ALL KIND OF ORIENTATIONS
AND LITERATURE TO MAKE POSSIBLE HIS PERMANENCY IN
ALCOHOLICS ANONYMOUS. HIS SOBRIETY WILL HELP HIM TO
INGRESS ^{INTO} THE SOCIETY AND HIS FAMILY.

SUCH AS MR. JESUS LOPEZ THERE ARE MANY SICK
ALCOHOLICS THAT WE HAD ANOTHER OPPORTUNITY. SO
WE DID NOT DESPISE IT, AND NOW WE ARE VERY
USEFUL FOR THE SOCIETY AS WELL FOR OUR LOVED ONES.

I HOPE YOU'LL FIND FAVOR IN MY PETITION, I
SALUTE YOU IN A VERY RESPECTFUL MANNER.

ATTENTIVELY

SIGNATURE

NAME

TELEPHONE: 618-813-6945

Durango, Dgo. Nov. 3 de 2006

**GOVERNOR
ARNOL SCHWARZENEGGER
STATE CAPITOL
SACRAMENTO, CA. 95814-4991**

Como un miembro mas de alcohólicos anónimos aquí en Durango México comunico a usted que para apoyar y contribuir a la liberación del Sr. Jesús López, D-37180 estoy dispuesto a proporcionarle toda la literatura y orientación para hacer posible su permanencia en alcohólicos anónimos y su sobriedad para que se integre a la sociedad y a su familia.

Como el Sr. Jesús López habemos muchos enfermos alcohólicos que tuvimos otra oportunidad y la supimos aprovechar y hoy somos útiles a la sociedad y a nuestros seres queridos.

Esperando vernos favorecidos en mi petición, lo saludo respetuosamente.

ATENTAMENTE

Juan Esteban Sánchez Cassio

Pedro Avila Nevarez
Federal Delegate for the
State of Durango, Mexico

TO: Very Respectful Governor
Mr. Schwarzenegger

I have been informed that Mr. Jesus Lopez, D37180, has been found eligible for parole, to be deported to our country, specifically, our State of Durango, where his family and his mother currently reside. This decision was made by the Board of Parole Hearings on 08-10-06, at Soledad State Prison (CTF).

Various distinctive agencies of the Mexican Government have notified me in my position as a Federal Delegate for the State of Durango, from where Jesus Lopez, D37180 is originally, that Jesus Lopez forms part of the Republic of Mexico. Also, we have sent various reports and other materials such as: Letters of Recommendation of good conduct, as well as reports, where he rendered his services in an honorable and efficient manner, the same documents that were revised by the Board of Parole Hearings.

We are all interested in his liberty, being that we know of his good behavior, and in which he finds himself completely rehabilitated.

My conclusion (official and personal) is that I am convinced that our native son Mr. Lopez does not present a risk to our public safety. I express honesty and give my complete support to the decision made by the respectable personnel of the Board of Parole Hearings. I adhere to said decision to concede Mr. Lopez his liberty.

His wishes and his plans, as indicated above, after obtaining his freedom are to return to our State of Durango, Mexico and work a small ranch which his mother owns. Also, he needs to assist in the rehabilitation programs of Alcoholics Anonymous which we have in our state. He has and will have all the necessary support that he will need to restart his life.

I understand that as a governor you have the final word to sign with the compassion that has always characterized you. Taking into account the case of Jesus Lopez, D37180, who has served a lengthy term of 21 years in which he has demonstrated his willingness to rehabilitate, to which the Board of Parole Hearings has determined and given their approval for his release.

That said, I appeal to your generosity, your benevolence, and your high spirit of justice, which is well known in our country. I ask you with all due respect to grant Mr. Jesus Lopez, D37180, his freedom.

We assure you that Mr. Jesus Lopez will no longer be delinquent. Also, we promise you that you will not be defrauded in granting our Mexican National his liberty, as he wishes to return to his country to work and support his mother.

Attentively

(On 11-21-06 this letter was translated from Spanish to English)

Pedro Avila Novarez
DIPUTADO FEDERAL
POR EL ESTADO DE DURANGO

GOVERNOR ARNOLD
SCHWARZENEGGER
STATE CAPITOL
SACRAMENTO, CA
95814-4991

Muy respetable gobernador
SR. SCHWARZENEGGER:

Se me a informado que el SR. JESÚS LÓPEZ, D37180, se le encontró elegible para estar en libertad y ser enviado a nuestro país, y por ende a nuestro estado de Durango, donde tiene a sus familiares principalmente a su madre del que es el único sostén, esta decisión fue hecha por (BOARD OF PAROLE HEARING), Junta Directiva de Prisiones en California en la Fecha 10 de Agosto 2006, en la prisión "SOLEDAD STATE PRISON, CTF."

De distintas dependencias del gobierno Mexicano y yo en mi calidad de Diputado Federal por el Estado de Durango, de donde JESÚS LÓPEZ D37180, es originario y que forma parte de la República Mexicana, como también se han enviado reportes de otros materiales entre estos cartas de recomendación, de buena conducta, y del trabajo donde él prestaba sus servicios en una forma honrada y eficiente. Los mismos documentos que fueron revisados por la BOARD OF PAROLE HEARINGS. (Junta Directiva de Prisiones). Ya que todos estamos interesados en su libertad porque sabemos de su buen comportamiento y que ya se encuentra totalmente rehabilitado.

Mi conclusión (oficial y personal de esto) es que estoy convencido de que nuestro paisano el SR. LÓPEZ, no representa un riesgo para la seguridad pública. Yo alabo honestamente y doy mi total apoyo a la decisión hecha por el respetable personal de BOARD OF PAROLE HEARINGS, y me adhiero a dicha decisión de concederle su libertad al SR. LÓPEZ.

Él desea y sus planes como ya lo dije en líneas arriba que tiene planeado ahora que obtenga su libertad de regresar a nuestro estado de Durango, México y trabajar en un pequeño rancho que tiene su madre y continuar asistiendo para su rehabilitación a los programas de Alcohólicos Anónimos que hay en nuestro estado. Él tiene y tendrá todo el apoyo que necesita para rehacer su vida.

Yo entiendo que Usted como gobernador tiene la ultima palabra para firmar con el gran corazón que siempre lo ha caracterizado y teniendo en cuenta que en este caso JESUS LÓPEZ D37180, ya ha compurgado una larga condena de 21 años durante los cuales a demostrado su deseo de rehabilitación misma que la Junta Directiva de Prisiones ha estudiado detenidamente y ha dado su aprobación para que obtenga su libertad, por ello apelando a su generosidad y a su benevolencia y a su alto espíritu de justicia bien conocido en nuestra patria yo le pido muy respetuosamente firmar la libertad de JESÚS LÓPEZ D37180, ya que él no volverá a delinquir y le aseguramos que Usted no será defraudado al concederle la libertad a este mexicano que desea volver a su patria para trabajar y mantener a su madre.

A T E N T A M E N T E
Victoria de Durango, Dgo. Agosto 8 del 2006

EXHIBIT “IV”



OFFICE OF THE GOVERNOR

January 5, 2007

Via Facsimile and U.S. Mail

Mr. Jesus Lopez, D-3/180
Correctional Training Facility
East Dorm – 76U
Post Office Box 686
Soledad, California 93960

Dear Mr. Lopez:

Penal Code section 3041.2 authorizes the Governor to review parole decisions of the Board of Parole Hearings (Board) concerning persons sentenced to an indeterminate term upon conviction of murder.

After considering the same factors considered by the Board, the Governor has invoked his authority to reverse the Board's decision to grant parole in your case. The Governor's statement of the reasons for his decision is attached.

A copy of this letter is being provided to you via facsimile, and the signed original (along with a statement of the reasons for his decision) is being sent by mail. Additionally, we are transmitting a copy of this letter and the attached decision to the Chairperson of the Board of Parole Hearings.

Sincerely,

A handwritten signature in black ink, appearing to read "LOUIS MAURO".

LOUIS MAURO
Chief Deputy Legal Affairs Secretary

Attachment

cc: Board of Parole Hearings (w/attachment)

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

JESUS LOPEZ, D-37180
SECOND-DEGREE MURDER

AFFIRM: _____

MODIFY: _____

REVERSE: X

On October 26, 1983, Jesus Lopez fired his .32 caliber pistol multiple times while inside a bar, killing Robert Barajas and wounding Guadalupe Olmedo.

According to the probation report, at approximately 1:45 a.m., San Francisco police officers responded to reports of a shooting at a bar. When officers entered the establishment, they found Robert and Guadalupe lying on the ground, each with multiple bullet wounds. Witnesses said that three individuals (one later identified as Jesus Lopez) entered the bar and began drinking beer. Jesus said later in statements during his 2006 parole hearing that while he was at the bar he had an argument with Robert. Jesus went to get his loaded .32 caliber pistol from his car and returned to the bar. According to the probation report, Jesus shot Robert, who was sitting on a barstool. Robert fell off the barstool and onto the floor, at which point, according to a witness, Jesus fired again. Guadalupe was present during the shooting and she was shot multiple times and wounded. Robert received four gunshot wounds and died from his injuries. Jesus told the 2006 Board that he did not know Robert or Guadalupe before he went to the bar that night.

When he perpetrated the life offense, Jesus Lopez was 23 years old and had no prior criminal record. He was apprehended almost two years later, when he was arrested for — and ultimately convicted of — smuggling illegal immigrants from Mexico into the United States. Following a court trial for the life offense, Mr. Lopez was convicted of second-degree murder and assault with a deadly weapon, both convictions enhanced for use of a firearm. He was sentenced to a term of life in prison with the possibility of parole for murder, plus a consecutive two-year enhancement for use of a firearm. He was also sentenced to a concurrent five-year term for assault with a deadly weapon with use of a firearm. During his incarceration for the life offense, Mr. Lopez was disciplined one time, in 1988, for playing a radio without headphones.

I have considered various positive factors in reviewing whether Mr. Lopez is suitable for parole at this time. In addition to remaining discipline-free for more than 18 years, Mr. Lopez made efforts during his incarceration to enhance his ability to function within the law upon release. He earned his GED in 1991 and completed various basic education, disease prevention, English-as-a-Second Language and bible study courses. He also completed a computer training program and received employment training pertaining to hazardous materials. In addition, he completed vocational training in auto mechanics and received additional training in small engine repair. He

Jesus Lopez, D-37180
Second-Degree Murder
Page 2 of 3

worked institutional jobs such as teacher's assistant, chapel clerk, tier tender, culinary cook, carpenter, porter and tutor. He also worked in plant operations as an electrician's assistant and in prison industry as a furniture finisher and machine operator. He availed himself of an array of self-help and therapy, including Alcoholics Anonymous, Narcotics Anonymous, Life Skills, Inmate Employability Program, Staying Sober Program, Kairos, Amer-I-can, Alternatives to Violence, Life Plan for Recovery, Fatherhood and Anger Management, Rapha 12 Step Program, Hands of Peace, Creative Conflict Resolution, Convicts Reaching Out to People and Impact Program. Mr. Lopez maintains seemingly supportive relationships with family and friends and he received some positive evaluations from mental-health and correctional professionals over the years.

Regarding his plans for parole, Mr. Lopez made no residential or employment plans in San Francisco County, his county of last residence, or anywhere else in California. Nevertheless, Mr. Lopez is subject to deportation to Mexico upon release, and he reportedly made plans in Mexico to live with his mother and work on a family ranch.

Despite the positive factors I have considered, the second-degree murder for which Jesus Lopez was convicted was especially grave, because it involved multiple victims, it involved some level of premeditation when Jesus left the bar and returned with a loaded gun, and the manner in which he committed the life offense — shooting Robert Barajas and Guadalupe Olmedo multiple times and then fleeing the scene — demonstrated an exceptionally callous disregard for human suffering and life. In addition, the motive for the crime was trivial in relation to the offense. It appears Robert presented no immediate threat to Jesus. According to the probation officer, “[t]his must be considered a most frustrating case in that the motivation for this vicious killing of one person and shooting of another is not apparent. Review of police reports and interviews with the defendant indicate that this tragedy occurred as a result of a possible argument over a bottle of beer or some rather obscure issue. As noted under the defendant's statement, he states he cannot remember what happened. Statements by witnesses indicate that there was no valid or reasonable provocation for such a serious response.” During sentencing proceedings, the judge said, “I still have yet to figure out a motive for this, but I do have somebody who was shot, was murdered, and I have got an innocent - - well, I say both of them were innocent because I don't know why the first killing took place.” Jesus had numerous opportunities to stop during this crime — after leaving the bar, after retrieving his gun, after returning to the bar, after approaching Robert, and after each of the numerous gunshots he fired — yet he chose to continue. According to the probation report, Robert was shot in the right chest, the midline of the neck, the abdomen and below his right ear. Guadalupe Olmedo was also shot multiple times. Jesus' actions also exposed additional people to the risk of death or serious injury. The probation report noted that several people were present during the shooting. The gravity of the second-degree murder committed by Jesus Lopez is alone sufficient for me to conclude presently that his release from prison would pose an unreasonable public-safety risk.

In finding Mr. Lopez suitable for parole, the 2006 Board said “the offense could have been committed as a result of significant stress in your life and the indication was that there was a life threatening knife attack that you had previously suffered” But even if Mr. Lopez was under

Jesus Lopez, D-37180
Second-Degree Murder
Page 3 of 3

stress when he perpetrated the life offense, I believe that factor, by itself, is presently insufficient to mitigate the nature and circumstances of the murder he committed.

At age 46 now, after being incarcerated for more than 21 years, Mr. Lopez says he accepts responsibility and is remorseful for his actions. But given the current record before me, and after carefully considering the very same factors the Board must consider, I find that the gravity of the murder perpetrated by Mr. Lopez presently outweighs the positive factors. Accordingly, because I believe his release would pose an unreasonable risk of danger to society at this time, I REVERSE the Board's 2006 decision to grant parole to Mr. Lopez.

Decision Date: 12/21/2006



ARNOLD SCHWARZENEGGER
Governor, State of California

EXHIBIT

THE ANNEXED INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN MY OFFICE.
ATTEST: CERTIFIED

ENDORSED
FILED

San Francisco County Superior Court

GORDON PARK-LI, Clerk
Superior Court of California, County of San Francisco

OCT 24 2007

ENDORSED
FILED

THE ANNEXED INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN MY OFFICE.
ATTEST: CERTIFIED

ENDORSED
FILED

San Francisco County Superior Court

OCT 24 2007

OCT 24 2007

GORDON PARK-LI, Clerk
BY: JACQUES KHOROZIAN
Deputy Clerk

ENDORSED

FILED

San Francisco County Superior Court

DEPUTY CLERK

OCT 24 2007

GORDON PARK-LI, Clerk
BY: JACQUES KHOROZIAN
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

Department No. 22

IN THE MATTER OF THE APPLICATION)
OF)
) WRIT NO. 5495
JESUS LOPEZ) (1st Dist. Court of Appeal
Petitioner,) Writ of Mandate A118661)
FOR A WRIT OF HABEAS CORPUS)
)

Background

A petition for writ of habeas corpus (#5495) was received and filed in this court on January 22, 2007. The petition was assigned for review, pursuant to normal court procedure. It was apparently misplaced some time after this, since the court became aware in August that no order had issued and the petition could not be found.

The court has since obtained a copy of the petition, which was attached as exhibit "C" to Petitioner's motion for an order to show cause filed in the Court of Appeal. The

Court of Appeal issued a peremptory writ of mandate ordering this court to issue an opinion on the petition within 30 days of September 25, 2007.

Opinion and Order

Petitioner is currently incarcerated in the Correctional Training Facility, Soledad, California. Petitioner was convicted of second-degree murder with a firearm on July 16, 1986. Petitioner was sentenced to seventeen years to life.

On August 10, 2006, the Board of Parole Hearings ("the Board") granted Petitioner a parole date. In a decision dated December 21, 2006, Governor Schwarzenegger reversed the Board's decision granting parole.

Petitioner contends that: 1) the Governor's reversal of parole must be overturned because the Governor's jurisdiction to review the Board's decision terminated on December 8, 2006; and, 2) the Governor's reversal of the Board's decision is in error because it is not based on "some evidence" that Petitioner would pose a risk to public safety if released.

I. THE COMMITMENT OFFENSE

The facts of the commitment offense were recited in the Governor's decision as follows:

According to the probation report, at approximately 1:45 a.m., San Francisco police officers responded to reports of a shooting at a bar. When officers entered the establishment, they found Robert and Guadalupe lying on the ground, each with multiple bullet wounds. Witnesses said that three individuals (one later identified as Jesus Lopez) entered the bar and began drinking beer. Jesus said later in statements during his 2006 parole hearing that while he was at the bar he had an argument with Robert. Jesus went to get his loaded .32 caliber pistol from his car and returned to the bar.

According to the probation report, Jesus shot Robert, who was sitting on a barstool. Robert fell off the barstool and onto the floor, at which point, according to a witness, Jesus fired again. Guadalupe was present during the shooting and she was shot multiple times and wounded. Robert received four gunshot wounds and died from his injuries. Jesus told the 2006 Board that he did not know Robert or Guadalupe before he went to the bar that night.

II. THE GOVERNOR DID NOT ACT IN EXCESS OF HIS JURISDICTION WHEN HE REVERSED THE BOARD'S GRANT OF PAROLE

Petitioner is incorrect in his contention that the Governor's power to review the Board's decision expired on December 8, 2006.

"During the 30 days following the granting... by a parole authority of the parole of a person sentenced to an indeterminate prison term based upon a conviction of murder, the Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority." (Cal. Pen. Code § 3041.2.)

Any proposed decision granting, modifying, or denying a parole date for a life prisoner, exclusive of those made during Progress Hearings, shall become final no later than 120 days after the hearing at which the proposed decision was made. (Cal. Code Regs., tit. 15, § 2043.) The Governor's authority to review a parole decision commences on the effective date of the Board's decision. (*In re Arafiles* (1992) 6 Cal.App.4th 1467, 1474.) In Petitioner's case, the effective date of the Board's decision was 120 days from the date parole was granted, or December 8, 2006.

The Governor had 30 days commencing on December 8, 2006, in which to review and act upon the parole decision. Thus, the Governor had until January 8, 2007, to review the Board's decision. The record shows the Governor made his decision on December 21,

1 2006, and the cover letter was dated on January 5, 2007. The
2 Governor's decision was timely.

3 **III. THE GOVERNOR'S REVERSAL WAS SUPPORTED BY SOME EVIDENCE**

4 The Governor relied on the commitment offense in determining
5 Petitioner was unsuitable for parole. The Governor found that
6 Petitioner's offense was "especially grave" because it involved
7 multiple victims, it involved "some level of premeditation," and
8 the manner in which the offense was committed demonstrated a
9 "callous disregard for human suffering and life." Additionally,
10 the Governor found that the motive for the crime was trivial in
11 relation to the offense, and that Petitioner's actions also exposed
12 additional people to the risk of death or serious injury, because
several people were present during the shooting.

13 The Governor found that "even if [Petitioner] was under stress
14 when he perpetrated the life offense, I believe that factor, by
itself, is presently insufficient to mitigate the nature and
circumstances of the murder he committed."

15 **A. Standard of Review**

16 The Board "shall normally set a parole release date" one year
17 prior to an inmate's minimum eligible parole release date. (Cal.
18 Pen. Code § 3041(a).) However, before the Board sets a release
19 date, it must determine whether the prisoner poses an unreasonable
20 risk to society. (Cal. Pen. Code § 3041(b); Cal. Code Regs., tit.
21 15, § 2402; *In re Dannenberg* (2005) 34 Cal.4th 1061, 1086.)

22 In determining whether an inmate poses an unreasonable risk to
23 society, the Board (or Governor) must consider all relevant
24 information, including the inmate's social history, criminal
record, the commitment offense itself, the inmate's behavior after
25 incarceration, and the inmate's parole plans. (Cal. Code Regs.,

tit. 15, § 2402.) Factors tending to show a prisoner is unsuitable for parole include an especially heinous and callous commitment offense, a previous record of violence, an unstable social history, and poor conduct in prison. (Cal. Code Regs., tit. 15, § 2402(c).)

The question before the reviewing court is "not whether some evidence supports the reasons. . . cite[d] for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety." (*In re Lee* (2006) 143 Cal.App.4th 1400, 1408.) Thus, the reviewing court must determine whether "some evidence" supports the finding that the prisoner poses an unreasonable risk to society. (*Ibid.*)

When a court reviews the Governor's reversal of a grant of parole, it is limited to determining only whether the decision is supported by "some evidence." (*In re Rosenkrantz* (2002) 29 Cal. 4th 616, 625.) The Governor's decision to affirm, modify or reverse the decision of the Board must be based on the same facts which the parole authority is required to consider. (*Id.* at 650.) The Board's (and hence the Governor's) discretion in parole matters has been described as "great" and "almost unlimited." (*Id.* at 655.) The precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the Board (or Governor), but the decision must reflect an individualized consideration of the specified criteria and cannot be arbitrary or capricious. (*In re Van Houten* (2004) 116 Cal. App. 4th 339, 348.)

As long as the Governor's decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to ascertaining whether there is some evidence in the

1 record that supports the Governor's decision. (*Rosenkrantz, supra*,
 2 29 Cal.4th at 677.)

3 **B. The Governor's Decision**

4 The law provides that the Board must grant parole unless it
 5 determines that public safety requires a lengthier period of
 6 incarceration for the individual because of the gravity of the
 7 offense underlying the conviction. (*Id.* at 654.) An inmate may
 8 not be found unsuitable for parole based entirely on the commitment
 9 offense if the defendant's acts were no more than the bare minimum
 10 needed to commit the offense. (*Id.* at 683.) In his decision to
 11 revoke the Board's recommendation, the Governor cites the facts of
 12 the commitment offense as reasons for denying parole.

13 To be used as the primary basis for denial of parole, the
 14 commitment offense must have been committed "in an especially
 15 heinous, atrocious or cruel manner." (Cal. Code Regs., tit. 15, §
 16 2402, subd. (c) (1).) In other words, to merit parole denial on
 17 these grounds, the crime must involve more than the minimum
 18 elements necessary to commit the crime. (*In re Rosenkrantz, supra*,
 19 29 Cal.4th at page 683.)

20 To support his findings in this case that Petitioner committed
 21 the commitment offense in an "especially heinous, atrocious or
 22 cruel manner" the Governor must cite to aggravating factors beyond
 23 the minimum necessary for a conviction of second-degree murder.
 24 Factors to be considered include:

25 (A) Multiple victims were attacked, injured or killed in
 26 the same or separate incidents.

27 (B) The offense was carried out in a dispassionate and
 28 calculated manner, such as an execution-style murder.

1 (C) The victim was abused, defiled or mutilated during or
2 after the offense.

3 (D) The offense was carried out in a manner which
4 demonstrates an exceptionally callous disregard for human
5 suffering.

6 (E) The motive for the crime is inexplicable or very
7 trivial in relation to the offense.

8 (Cal. Code Regs., tit. 15, § 2402.)

9 In reversing the Board's grant of parole, the Governor found
10 that the second-degree murder was especially grave. It involved
11 multiple victims, some level of premeditation (because Petitioner
12 left and returned with a loaded gun), and flight by the Petitioner
13 after shooting the victims multiple times, demonstrating an
14 exceptionally callous disregard for human suffering and life.

15 In fact, the Governor observed that Petitioner "had numerous
16 opportunities to stop during this crime—after leaving the bar,
17 after retrieving his gun, after returning to the bar, after
18 approaching Robert, and after each of the numerous gunshots he
19 fired—yet he chose to continue." Petitioner's firing of the gun
20 inside the bar also "exposed multiple people to the risk of death
21 or serious injury," and the motive for the shooting was trivial in
22 relation to the offense.

23 Petitioner contends that his case is similar to *In re Lee* (2006) 143 Cal.App.4th 1400. In *Lee*, the defendant, Wen Lee,
24 sold his restaurant to Johnny Soong in return for Soong's promise
25 to make periodic payments toward the purchase price. Lee intended
 to support his retirement from the sale proceeds. (*Id.* at 1404)
 Soong repeatedly failed to make payments, however, causing Lee
 hardship and forcing him to renegotiate Soong's debt a number of
 times. (*Ibid.*) Some renegotiation meetings were heated. (*Ibid.*)

1 During one meeting, Soong pulled a knife on Lee, forcing Lee to
2 flee. (*Ibid.*)

3 The next time Lee visited Soong at the restaurant to collect a
4 payment, Lee went armed with a gun and box of ammunition. (*Ibid.*)
5 He had decided that, if Soong refused to pay, he would kill Soong
6 and then himself. (*Ibid.*) Lee entered the restaurant and asked
7 Soong for his money. (*Ibid.*) Soong shook his head and said he did
8 not have time to talk. (*Ibid.*) Lee pulled out his gun and fired
9 five times before it jammed. (*Ibid.*) He hit Soong twice, who
survived the shooting, but one of the bullets hit Soong's wife,
Tuai Li-Chun, in the head, killing her. (*Ibid.*)

10 Lee pleaded guilty to attempted premeditated murder of Mr.
11 Soong, second degree murder of Mrs. Soong, and two firearms
12 enhancements. (*Ibid.*) Lee received a sentence of 17 years-to-life
13 with possibility of parole. (*Ibid.*) Sixteen years later, the Board
14 concluded Lee was eligible for parole. (*Ibid.*) The Governor
15 reversed the Board's grant of parole, based on the commitment
16 offense and Lee's recent expression of remorse, despite Lee's
17 exemplary prison record. (*Id.* at 1404-1406.) The Governor viewed
18 Lee's acts in committing his crimes as "atrocious" and beyond the
"the minimum necessary to sustain" his convictions. (*Id.* at 1405.)

19 The Court of Appeals vacated the Governor's reversal. (*Id.* at
20 1414.) The Court compared Lee's crimes to crimes that the Governor
had properly found to be "atrocious," and found that Lee's crime
21 did not compare because Lee's acts in committing his crime did not
22 involve more than the minimum necessary to sustain his convictions.
(*Id.* at 1405.) The court explained:

23 The measure of atrociousness is not general notions of
24 common decency or social norms, for by that yardstick all
25 murders are atrocious. (See *In re Scott, supra*, 119

1 Cal.App.4th at p. 891, 15 Cal.Rptr.3d 32 [“ ‘[A]ll second
2 degree murders by definition involve some callousness-
3 i.e., lack of emotion or sympathy, emotional
4 insensitivity, indifference to the feelings and suffering
5 of others’ ”].) Rather, the inquiry is whether among
6 murders the one committed by Lee was particularly
heinous, atrocious or cruel. (*In re Ramirez* (2001) 94
7 Cal.App.4th 549, 570, 114 Cal.Rptr.2d 381, disapproved on
another point by *In re Dannenberg* (2005) 34 Cal.4th 1061,
8 1082-1083, 1100, 23 Cal.Rptr.3d 417, 104 P.3d 783.)

9 (Id. at 1409.)

10 At first glance the facts in *Lee* seem quite similar to those
11 here. However, there are differences. First of all, Lee committed
12 his crime over a longstanding business debt. The target was
13 familiar with Lee and had refused to pay back a loan. Here, the
target was unknown to Petitioner, and the motive is unclear. It
appears to have been a foolish disagreement over nothing more
serious than some insults, a very trivial motive indeed.

14 Also, Lee was already armed when his target refused once again
15 to pay the debt. Petitioner actually had to go out of his way to
16 get his firearm after becoming angry in the bar. He could have
17 just as easily left the scene and avoided the whole incident. He
18 had no reason to see the victims again. Instead he came back into
the bar and shot the targeted victim, causing him to fall to the
19 ground. He did not stop at this point, but continued shooting. In
20 the course of shooting the target victim he hit a bystander not
once, but several times. He placed everyone in the bar at risk
21 through his actions.

22 The facts of *Lee* are distinguishable from the facts in this
23 case. In addition, the opinion in *Lee* has been criticized. In
24 *People v. Jacobson* (2007) 154 Cal.App.4th 849, the appellate court
disagreed with the *Lee* decision, as well as several other courts of
25

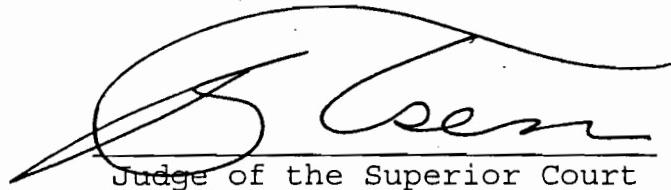
1 appeal decisions. (*Id.* at 853.) The court disagreed with them
2 because they "transmuted the Rosenkrantz standard into one that
3 permits the court to reweigh evidence, recalibrate relevant
4 factors, and reach an independent determination whether the inmate
continues to pose a risk to public safety." (*Ibid.*)

5 **IV. CONCLUSION**

6 Here, if the correct Rosenkrantz standard is applied the
7 Governor's reversal must be upheld, since there is some evidence to
8 support it.

9 Therefore, the petition for a writ of habeas corpus is DENIED.

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12 Date 10/24/07

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Judge of the Superior Court

**PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(C.C.P. §§ 1013(A), 2015,5)**

I, Jesus Lopez, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Lopez, J, CDCR #: D37180
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689, CELL #: BW-201
SOLEDAD, CA 93960-0689.

On April 15, 2008, I served the attached:

EXHIBITS FOR PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS.

Bound, Submitted and Lodged Separately

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
P.O. BOX 36060
SAN FRANCISCO, CA 94102-9680

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 15, 2008.

Jesus Lopez
JESUS LOPEZ

Declarant